TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 137

MASSACHUSETTS TRUSTEES OF EASTERN GAS AND FUEL ASSOCIATES, PETITIONERS,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED MAY 16, 1963

CERTIORARI GRANTED OCTOBER 14, 1963

SUPREME COURT OF THE UNITED STATES

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IN THE

United States Court of Appeals

FOR THE FIRST CIRCUIT

No. 6035

MASSACHUSETTS TRUSTEES OF EASTERN GAS AND FUEL ASSOCIATES, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

On Appeal from the United States District Court for the District of Massachusetts

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APPELLANTS' RECORD APPENDIX

Relevant Docket Entries

EUGENE H. BIRD, JOHN J. BURNS, PAUL C. CABOT, CHARLES A. COOLIDGE, LEO F. DALEY, EDWARD M. FARNSWORTH, HENRY W. HILLS, HALFDAN LEE, H. S. PAYSON ROWE, LESTER MARTIN, CHARLES B. HOUSTON, 2ND,

and

RALPH W. KURTZ, as they are Trustees of EASTERN GAS AND FUEL ASSOCIATES under an agreement and declaration of trust, etc.

v.

UNITED STATES OF AMERICA

Contract—(Merchant Ship Sales Act)

Admiralty

No. 55-26-W — Wyzanski, D. J.

1955	
May 10	Libel filed.
1959	
Oct. 19	Answer of defendant filed. Affidavit of Robert G. Klages attached thereto.
1960	
Feb. 15	Cross-libel filed by the USA against Massachusetts Trustees of Eastern Gas and Fuel Associates.
Sept. 30	Exceptive allegations to the cross-libel filed.
Oct. 4	Exceptions to cross-libel filed.
Nov. 22	Wyzanski, J. Hearing on exceptions to cross-libel. Taken under advisement.
Nov. 22	Supplemental affidavit of Robert A. Caswell filed.
Nov. 22	Affidavit of William M. Brady filed.

1981

Jan. 29 — Exhibits submitted in support of supplemental recommendations of cross-respondents filed.

1982

Jan. 2 — Affidavit of Lawrence F. Letellier filed.

Jan. 5 — Wyzanski, J. Hearing on exceptions to cross-libel. Matter under advisement.

Jan. 15 — Wyzanski, J. Opinion entered. Copies mailed to James B. Richman, Esq., 1000 Stuart St., Boston; J. Franklin Ford, Esq., Kaminen and Ford, 1000 K St., N. W., Washington, D. C.; and Asst. U. S. Atty. Richford, 1107 Federal Bldg., Boston, Mass.

April 2 — Wyzanski, J. Hearing on validity of accounting cut-off period and on change in Court's opinion re fair value of assets. Parties to prepare stipulation re small change in opinion and to present draft of suggested findings and conclusions 30 days from date. Also prepare suggested form of decree embodying rulings which have already been made and those rulings which Court may hereafter make.

May 2 — Findings of fact and conclusions of law proposed by respondent cross-libellant U.S.A. filed.

May 2 — Wyzanski, J. Findings of fact and conclusions of law supplementary to the opinion of January 15, 1982 entered. *The second cause of action of libel is dismissed on the merits.*"

May 2 — Wyzanski, J. It is ordered

1. The opinions of this Court filed on Jan. 15, 1982 and on May 2, 1982 are adopted as the Court's findings of fact and conclusions of law;

2. That there is no just reason for delay in entering final judgment upon the Fifth and Sixth separate causes of action set forth in the libel and on the cross-libel

3. The Fifth separate cause of action set forth in the libel is dismissed on the merits

4. The Sixth separate cause of action set forth in the libel is dismissed on the merits.

5. The Fifth separate cause of action set forth in the cross-libel is dismissed on the merits.

Form 33 Notice of appeal filed by Mass. Trustees of Eastern Gas and Fuel Associations. Service accepted by Asst. U.S. Attny.

Volume I. Document 10

[Caption Omitted]

Opinion

January 15, 1962

Weinfeld, D. J.

A. Introduction

This controversy involves the validity and interpretation of Part I Clause E and Part II Clauses 2 [12] and 13 of the standard bareboat [sic] charter contract of the Maritime Commission under § 709(a) of The Merchant Marine Act, 1936, 49 Stat. 1985 and § 5(b) and (c) of The Merchant Ship Sales Act, 1946, 60 Stat. 41. Essentially the dispute turns on whether the Commission acted *intra vires* in providing in the charter for the recapture of a charterer's profits by the Government on the basis of a contractual additional excess profits rate, not covered by § 709(a) of The Merchant Marine Act of 1936.

B. Pleadings in This Suit

Trustees of Eastern Gas and Fuel Associates (hereafter called "Eastern") filed, under the Suits in Admiralty Act, 41 Stat. 525, 46 U.S.C. § 741, a libel against the United States. The prayer sought recovery of approximately $220,000 alleged due because of Eastern's excess payments of charter hire for 10 United States Government vessels.

The first cause of action pleaded in the libel makes allegations substantially as follows. The Merchant Ship Sales Act of 1946, 60 Stat. 41 authorized the Government to charter, on a bareboat basis, certain war-built vessels. The Maritime Commission, on April 13, 1946, entered, and, on April 23, 1946, published General Order 60, reciting the terms on which it would charter such vessels. Conforming to the Order, the Commission prepared bareboat charter contract MCe-41881. November 7, 1946, libelants, and,

November 13, 1948 [1946], the Government executed that contract. Upon the basis of the libelants' preliminary accounting statements, based upon the Government's computation of charter hire, the libelants made payments on account. By Audit Report, dated August 20, 1954 the Government made its final review of libelants' accounting. This process required libelants to make payments which libelants allege were excessive and unlawful because contrary to § 709 of the Merchant Marine Act, 1936, 49 Stat. 1985 incorporated in § 5(c) of the Merchant Ship Sales Act of 1946, 60 Stat. 41. Libelants vainly demanded from the Government reimbursement of these allegedly excessive and unlawful payments amounting to approximately $78,000.

The second cause of action repeats the allegations as to the Commission's authority to contract, as to the execution of the contract, and as to the preliminary accountings. Then the libelants allege that on August 15, 1947 the Commission served on libelants a notice effective September 1, 1947, purporting to terminate the charters unless the libelants agreed to an amendment providing that additional charter hire for voyages commenced after September 1, 1947 be computed separately from voyages commenced prior thereto. The libelants allege that this additional charter hire was contrary to the law and the original contract. But "the libelants, under duress and threat of the illegal termination of the charter and without consideration, executed the addendum . . ." The libelants, pursuant to this allegedly improper addendum, paid the Government $148,554.90, for which they have vainly demanded reimbursement.

The third cause of action repeats much of what is allegal in the second cause of action. But the libelants further, and as an alternative to the second cause of action, plead that even if the aforesaid addendum were valid, and even if the libelants do not succeed on their second cause of action, nonetheless the Government has

wrongfully included in the accounting under the addendum the expenses incurred after September 1, 1947 in connection with the S.S. EMILY DICKINSON and the S.S. JAMES BOWDOIN, both of which are asserted not to have engaged in voyages on or after September 1, 1947. The libelants paid on this account $58,563.91, for which they have vainly demanded reimbursement.

In its answer the Government admits that the Commission made the bareboat charter contract set forth in the libel, and that the Government has refused to pay back the charter hire paid by the libelants. But the Government pleads that not merely the bareboat charter contract of November 1946, but also the addendum, sometimes called "Shipsales Demise Contract No. MCc-41881, Addendum No. 7, executed in October 1947, were valid under relevant statutes. Furthermore, the Government sets forth as separate defenses that the libelants, knowing the terms of the statute and proposed charters, first, voluntarily executed the contracts and made the payments thereunder, second, did not promptly seek equitable or other relief, and third, did not seek relief within the period of the statute of limitations.

Later, the Government filed a cross-libel.

In its first cause of action, it claimed that for the vessels chartered under the bareboat charter contract No. MCc-41881 Eastern owes $1,125,808.06, which is the difference between the total charter hire actually paid by Eastern, and "the world market hire rate of $2,298,607. (said to be) required to be paid . . . pursuant to section 5 of the Merchant Ship Sales Act of 1946."

In its second cause of action, the Government claimed that under the aforesaid contract Eastern agreed, particularly in Clause 13, Part II, to a schedule which calls for payments of $528,306.68, of which only $464,876.09 has been paid, leaving still due $63,430.59.

In its third cause of action, the Government claimed that despite § 709(a) of the Merchant Marine Act of 1936, which is incorporated under the aforesaid contract, Eastern in accounting erroneously carried forward from the 1946 annual accounting period into the 1947 annual accounting period "losses plus 10% per annum on the charterer's capital necessarily employed in the business of the vessels in the sum of $5,033.47 . . .' thereby decreasing the cumulative net voyage profits in the 1947 accounting period and consequently decreased the amount of charter hire due . . . by ninety per cent of $5,033.47, or [so it is pleaded] $4,530.10."

In its fourth cause of action, the Government for the first time in this litigation referred to Addendum No. 5 to Contract No. MCc-41881, executed by Eastern May 28, 1947 and by the Government July 17, 1947. The Government claimed that under that addendum, for accounting purposes, all vessels under the charter were to be considered as a separate fleet and accounting was to be done on an annual basis. Despite this, Eastern carried forward from the 1946 annual accounting period to the 1947 annual accounting period losses plus 10% per annum on the charter's [sic] capital, "thereby decreasing the cumulative net voyage profits in the 1947 accounting period and consequently decreased the amount of charter hire due . . . in the 1947 annual accounting period by fifty per cent of $6,186.78 or [so it is pleaded] $3,063.09."

Eastern replied with "Exceptions to Cross-Libel." This alleged first, that the cross-libel failed to state a claim upon which relief may be granted; and second, that the first, [not the second], third, and fourth causes of action fail to state a claim within the jurisdiction of this Court."

Then Eastern filed "Exceptive Allegations to the Cross-Libel." This alleged that the Government's first cause of cross-libel had no merit in view of the provisions of the charter contract No. MCc-41881, and that the third and

fourth causes had no merit in view of § 709(a) of the Merchant Marine Act of 1936, 49 Stat. 1985, 46 U.S.C. § 1199(a) and the Maritime Commission's regulations appearing in 46 CFR 209.49.

C. Findings Based on Hearing of January 3, 1962

1. Following the pleadings recited above, the parties filed elaborate briefs and affidavits, running to hundreds of pages. On January 3, 1962 this Court held a hearing at which from these affidavits and like documents the parties selected more than a score of exhibits which they agreed should be received, and which this Court did receive, as evidence. The parties pressed for rulings on the exceptions, the exceptive allegations, and all other matters ripe for rulings of law. From the discussion at the bar it appeared that if this Court ruled now upon the interpretation and validity of the contract on which both the libel and the cross-libel are based, certainly further trial, if any were needed, in this Court would be expedited, and possibly immediate appeal to the Court of Appeals on certain aspects of the case might be proper. On this basis, this Court will address itself to both the facts and the law relevant to the pivotal contract.

2. As of October 1, 1946 Eastern and the Commission entered into a bareboat charter, Contract No. MCc-41881, for the use of certain Government-owned vessels.

3. This contract was in the Commission's then standard form, heretofore considered in *Sword Line* v. *U. S.*, 2nd Cir., 228 F. (2d) 344, (per L. Hand, C.J.); *Dichman, Wright, & Pugh, Inc.* v. *U. S.*, S.D.N.Y., 144 F. Supp. 922, (per Dimock, D.J.); *U. S.* v. *East Harbor Trading Corp.*, S.D.N.Y., 190 F. Supp. 245, (per I. Kaufman, D.J.); *American Export Lines Inc.*, v. *U. S.*, Ct. of Cl., 290 F. (2d) 925, (per Whitaker, J., Madden, J. dissenting); *U. S.* v. *Moore-McCormack Lines, Inc.*, D. Md., unreported, 1961, (per Thomsen D.J.); and other cases not now necessary to cite.

4. In this standard form contract the portions now relevant are Part I Clause E and Part II Clauses 2 [12] and 13, which read as follows:

"Part I

CLAUSE E. *Rate of Basic Charter Hire.* Unless otherwise specially agreed such rates as appear opposite the name of each Vessel listed in Clause C(1) and such addenda as appear opposite the name of each Vessel listed in Clause C(1) and such addenda as may be executed. [sic]

Part II

Clause 12. *Basic Charter Hire.* The Charterer shall pay to the Owner the basic charter hire at the monthly rate provided for in Part I hereof from the day and hour of delivery of the Vessels until and including the day and hour of redelivery to the Owner pursuant to the terms of this Agreement; or if any Vessel shall be lost, hire shall continue until the time of her loss, if known, or if the time of loss be uncertain then up to and including the time last heard from. Payment of such basic charter hire shall be made to the Owner at Washington, D. C., on delivery of the Vessel for the remainder of the calendar month in which delivery is made, and thereafter monthly in advance on the first day of each month.

Clause 13. *Additional Charter Hire.* If at the end of the calendar year 1946, or any subsequent calendar year or at the termination of this Agreement, the cumulative net voyage profit (after the payment of the basic charter hire hereinabove specified and payment of the Charterer's fair and reasonable overhead expenses applicable to operation of the Vessels) shall exceed 10 per centum per annum on the Charterer's capital necessarily employed in the business of the

Vessels (all as hereinafter defined), the Charterer shall pay over to the Owner at Washington, D. C., within 30 days after the end of such year or other period, as additional charter hire for such year or other period, an amount equal to the percentages of such cumulative net voyage profit in excess of 10 per centum on such capital computed in accordance with the following table (but such cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in any subsequent year or period):

Cumulative net voyage profit (in excess of 10% per annum on capital necessarily employed)not in excess of $100 per day—50%.

Cumulative net voyage profit (in excess of 10% per annum on capital necessarily employed) in excess of $100 per day but not in excess of $300 per day—75% on such excess over $100 per day.

Cumulative net voyage profit (in excess of 10% per annum on capital necessarily employed) in excess of $300 per day—90% on such excess over $300 per day

The Charterer agrees to make preliminary payments to the Owner on account of such additional charter hire and on account of any additional charter hire accrued under any War Shipping Administration Form 203 (WARSHIPDEMISEOUT) charter (prior to the times of payment provided for above or in such WARSHIPDEMISEOUT charters) at such times and in such manner and amounts as may be required by the Owner; provided, however, that such payment of additional charter hire shall be deemed to be preliminary and subject to adjustment either at the time of the rendition of preliminary statements or upon the completion of each final audit by the Owner, at which times such payments will be made to the Owner as such preliminary statements or final audit may show to be due, or such over-

payments refunded to the Charterer as may be required."

5. October 29, 1946, the Commission issued Supplement 8 to General Order 60, 11 F.R. 13215, 46 C.F.R. 299.31(k), 299.49, and 299.56(b)(5), the pertinent parts of which read as follows:

"(k) *Preliminary determination and payment of "additional charter hire".* On or before November 30, 1946 and on or before the end of each succeeding calendar month, every charterer under a bareboat charter agreement SHIPSALESDEMISE 303 shall pay over to the Commission ninety percent (90%) of the amount then indicated to be due the Commission on account of additional charter hire under that agreement and under WARSHIPDEMISEOUT 203 (if the chartered vessels from the War Shipping Administration under that form of agreement) for the period ending two calendar months prior to that date, after deducting, with respect to such payments made subsequent to November 30, 1946, the amount of any previous payments made on account of additional charter hire for the period and under the agreement involved. Such payments shall be deemed to be preliminary and subject to adjustment upon the completion of audit by the Commission covering the period involved, and neither the tender thereof by the charterer, nor its acceptance by the Commission, shall prejudice the rights of either under the applicable bareboat charter agreement or otherwise. The amounts of such payments shall be calculated in accordance with the applicable provisions of the respective agreements, particularly Clause (H)—"Special Provisions" of Part I and Clauses 13—"Additional Charter Hire" and 23—"Definitions" of Part II of SHIPSALESDEMISE 303, and Clauses 13—"Additional Charter Hire" and 23—"Definitions" of Part II of WARSHIPDEMISEOUT 203, and in accordance

with these regulations. In instances where audited financial and operating statements have not been prepared by the charterer from its records or by its public accountants, tentative calculations should be prepared for this purpose."

"46 CFR 299.49:

Calculation of net voyage profit on cumulative basis

In providing for the calculation of additional charter hire based on the cumulative net voyage profit of the Charterer, Clause 13 of Part II of SHIPSALESDEMISE 303 provides also that such cumulative net profit so accounted for shall not be included in the calculation of cumulative net profit in any subsequent year or period. Pursuant to these provisions of the bareboat charter agreements, only deficiencies in net voyage profits may be carried forward, . . ."

"46 CFR 299.56(b)(5):

(5) That if, in any instance, the rules and regulations prescribed herein should conflict with the provisions of an applicable statute or agreement, such provisions shall govern."

6. Eastern has continuously since August 15, 1946, when it joined with other members of the American Merchant Marine Institute, Inc. in a telegram to the Commission, protested that the rates of so-called "additional charter hire" specified in Part II Clause 13 of the standard contract exceed the rate authorized by applicable law. Although Eastern executed Contract No. MCc-41881, including Part II Clause 13, and made payments pursuant thereto, it has always relied on the Commission's assurance in Supplement 8 to General Order No. 6, particularly 46 C.F.R. 293.31(k)(1) [299.31(k)(1)], that "neither the tender" of payments "by the charterer, nor its acceptance by the Commission, shall prejudice the rights of either under the applicable bareboat charter agreement or otherwise."

7. To date, Eastern has paid the Commission $1,125,808.06 on account of Contract No. MCc-41881. At this time it is unnecessary to state the details, or to say more than that the payments have in general, and subject to some variations, been in accord with the broad outlines of the letter of the contract.

D. The Statutory Background

1. In this litigation we are concerned with two statutes which are *in pari materia*,—The Merchant Marine Act, 1936, 46 [49] Stat. 1985 and The Merchant Ship Sales Act of 1946, 69 Stat. 41.

2. The three provisions of the 1936 Act which are most relevant are § 207, 49 Stat. 1985, 1988, conferring upon the Commission general powers to make contracts necessary to carry on the activities authorized by The Merchant Marine Act; § 704, 49 Stat. 1985, 2008, relating to the Commission's power to charter vessels acquired by the Commission; and § 709(a), 49 Stat. 1985, 2010, providing for recapture of excess profits. The texts, so far as relevant, read as follows:

> "Sec. 207. The Commission may enter into such contracts, upon behalf of the United States, as may, in its discretion, be necessary to carry on the activities authorized by this Act, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter."

> "Sec. 704. All vessels transferred to or otherwise acquired by the Commission in any manner may be chartered or sold by the Commission pursuant to the further provisions of this Act."

> "Sec. 709. (a) Every charter made by the Commission pursuant to the provisions of this title shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumu-

lative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charterer's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall exceed 10 per centum per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Commission, as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum: *Provided*, That the cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

(b) Every charter shall contain a definition of the terms 'net voyage profit' and 'fair and reasonable overhead expenses', and 'capital necessarily employed', as said terms are used in subsection (a) of this section, setting forth the formula for determining such profit and overhead expense and capital necessarily employed, which definitions shall have been previously approved by the Commission and published in the advertisement for bids for such charter."

3. The section of the 1946 Act which is most relevant is § 5, 60 Stat. 41, 43, governing the "Charter of War-Built Vessels To Citizens", and providing for citizens' applications for charters, for the Commission's fixing of charter hire, and for the mandatory application to charters of, *inter alia*, § 709(a) of the 1936 Act. The whole text of § 5 follows:

"Sec. 5. (a) Any citizen of the United States and, until July 4, 1946, any citizen of the Commonwealth of the Philippines, may make application to the Commission to charter a war-built dry-cargo vessel, under the jurisdiction and control of the Commission, for bareboat use. The Commission may, in its discretion,

either reject or approve the application, but shall not so approve unless in its opinion the chartering of such vessel to the applicant would be consistent with the policies of this Act. No vessel shall be chartered under this section until sixty days after publication of the applicable prewar domestic cost in the Federal Register under subsection 3(c) of this Act.

(b) The charter hire for any vessel chartered under the provisions of this section shall be fixed by the Commission at such rate as the Commission determines to be consistent with the policies of this Act, but, except upon the affirmative vote of not less than four members of the Commission, such rate shall not be less than 15 per centum per annum of the statutory sales price (computed as of the date of charter). Except in the case of vessels having passenger accommodations for not less than eighty passengers, rates of charter hire fixed by the Commission on any war-built vessel which differ from the rate specified in this subsection shall not be less than the prevailing world market charter rates for similar vessels for similar use as determined by the Commission.

(c) The provisions of sections 708, 709, 710, 712, and 713, of the Merchant Marine Act, 1936, as amended, shall be applicable to charters made under this section."

E. Interpretation of the Relevant Statutes

1. By § 5 of the 1946 Act, and, to some extent, by § 207 and § 704 of the 1936 Act, the Commission was given power to charter Government-owned vessels of the type here in issue.

2. The first sentence of § 5(b) lays down two requirements: (1) that the Commission fix charter hire "at such rate as the Commission determines to be consistent with

the policies of this Act." and (2) that "such rate shall not be less than 15 per centum of the statutory sales price (computed as of the date of the charter)." . . . "except upon the affirmative vote of not less than four members of the Commission."

3. Before making any other comment, I underline the point that on the face of the statute the words "basic rate" do not appear. That term is a coinage of lawyers seeking brevity, ease of recollection, and vividness. But it may have circulated confusion. It carries an unfounded connotation of a fixed maximum-minimum formula. No such double-edged formula appears explicitly in the Act.

4. Neither the first of the two requirements in § 5(b) nor any other part of the statute requires that the Commission make its determination by regulation, [or] by order after notice and hearing. The situation is quite unlike the case where an administrative agency prescribes a regulation, or compels, under penal or civil sanction, adherence to a rule of conduct, or requires persons to suffer detriments, or proposes a scale of benefits. Hence there is no room for the application of such cited cases as *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 196-197 and *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 676. For purposes of § 5(b) of the 1946 Act, the Commission "determines" a charter hire rate when it executes a charter contract. The execution of a particular contract implies, and adequately implies, that the Commission has determined that the rates therein stipulated are "consistent with the policies of this Act."

5. Nor does the first of the two requirements of § 5(b) imply that the Commission must use some special formula, or some single measure, for fixing charter hire. If the rate "fixed by the Commission" is "consistent with the policies of this Act", the rate can be arrived at by any formula or combination of formulae. It can be a flat dollar figure; it can be a percentage of the statutory sales

price; it can be a combination of a percentage of the statutory sales price and of a share in the charterer's profits. *Dickman, Wright & Pugh, Inc.* v. *U. S.*, S.D.N.Y., 144 F. Supp. 922, 926, first full paragraph; *U. S.* v. *East Harbor Trading Corp.*, S.D.N.Y., 130 F. Supp. 245, 249, second column; *American Export Lines, Inc.* v. *U. S.*, Ct. of Cl., 280 F. (2d) 925, 931, second column, second paragraph.

6. Some of the authorities just cited, and at the pages just cited, assume that if the Commission does fix the rate as a combination of a percentage of the statutory sales price and of a share in the charterer's profits, the Commission must expressly refer to its purported exercise of power under § 5(b), and perhaps that the Commission must draft the contract so as either to incorporate a reference to § 5(b) or as to make the structure and wording of the contract obviously consistent with an implied reliance on § 5(b). At least this is how I construe the passages in the opinions just cited. But if my understanding of the opinions of Judges Dimock, Kaufman, and Whitaker be correct, I disagree with them. When a corporation has a statutory power to make a contract of a particular type, and it does make such a contract, it is not mandatory that the corporation recite in the contract the statutory power. Recital is common and convenient, but non-essential. And if it be argued that not only the failure to refer to the authorizing section, but also the structure and wording of the contract (particularly, the use of the non-statutory phrase "basic charter hire") show that mistakenly the corporation and the other party both supposed that the corporation was acting under a purported and non-existent authority conferred by an inapplicable section, this argument is without weight. A mistake of that kind is not such a mistake of law as to affect the validity of the contract or the assent objectively given by the parties to the contract. It is not a mistake as to the vital question of the corporation's au-

thority, but only as to the literary question as to the source of that authority. Nor is there the slightest ground for assuming that if the Commission had been apprized of the correct source of its authority, the Commission or the other party would have made a contract different in substance, as distinguished from wording.

7. (a) A more subtle argument, akin to the argument just rejected, is that if § 5(b) be the source of the Commission's authority to combine with a percentage of the statutory sales price a share of the charterer's profits, then the only permissible method of calculating the total obligations of the charterer under the contract is this: the charterers, first, would have to pay the Government (1) the stipulated percentage of the statutory sales price and (2) so much of the share of the charterer's profits as exceed the 50% of the excess profits stipulated by § 709(a) of the 1936 Act, and, second, would have to pay the Government 50% of the remaining profits. *Dichman, Wright & Pugh, Inc.* v. *U. S.*, S.D.N.Y., 144 F. Supp. 922, 926, first full paragraph. Judges Dimock and Kaufman seem to have left the parties in the cases before them to prove if they could that they had contracted to follow that method, which these judges, as I understand them, thought permissible under the statute. But the parties apparently did not follow through on that method. They seem to have recognized that it was a method not articulated in the contract, not used by either the charterer or the Government in accounting, and not otherwise contemplated by either party.

(b) Moreover, the so-called subtle argument is not tenable. Its attempted dovetailing of the 1936 and 1946 Acts rests on inexact and illusory supports. The argument, in effect, is that the phrase "the charter hire reserved", used in the parenthetical clause of § 709(a) of the 1936 statute, bears a close verbal correspondence to the phrase "the chater hire . . . fixed by the Commission", used in § 5(b) of the 1946 statute. Hence, so it is argued, "the

charter hire reserved", as used in § 709(a) of the 1936 statute, embraces both (1) the stipulated percentage of the statutory sales price and (2) so much of the share of the charterer's profits as exceed the 50% of the excess profits stipulated by § 709(a) of the 1936 Act, if both (a) and (b) were, pursuant to § 5(b) of the 1946 statute, "fixed by the Commission" as part of "the charter hire."

(c) To this verbal argument one answer is that the phrase "the charter hire reserved" in the 1936 Act was adopted a decade before the 1946 Act used the phrase "the charter hire . . . fixed by the Commission." The 1936 phrase does not refer forward to 1946. Prolepsis is not usually part of the fair canons of statutory construction. Furthermore, the 1936 phrase does not speak to the precise problem of the meaning of a term in § 5(b) of the 1946 Act, or purport to define it, or purport to use the 1946 terminology in widening the 1936 phrase.

(d) Moreover, the mere fact that § 709(a) of the 1936 Act was, a decade later, re-enacted by § 5(c) of the 1946 statute does not change what has just been said. The re-enactment was a typical patch-work job. The draftsman wanted to make applicable to charters under the 1946 law the 50% excess profits provision of the 1936 law. Probably he did not give special attention to the phrase "the charter hire reserved", used in the 1936 statute, or stop to consider what it meant. There is not the slightest indication that it was anyone's intent to give the phrase in 1946 a broader meaning than it had in 1936. Nor is there basis for stretching the term "reserved" to include a charter hire which is merely "fixed" subject to a contingency, not set aside with the unconditional absoluteness commonly connoted by the emphatic word "reserved".

(e) A second answer to the argument is that there is no policy consideration which makes it appropriate to construe the phrase the "charter hire reserved" in § 709(a) of the 1936 statute as embracing *all* that may be exacted as

"the charter hire" pursuant to § 5(b) of the 1946 statute. What § 709(a) seeks to reach is excess profits above only such part of the "charter hire reserved" as is *unconditionally* charged in the charter, (as, for example, a flat dollar rate, or a percentage of the statutory sales price of a vessel, or the prevailing world market rate for similar vessels). It does not seek to embrace any share of profits or additional payment which the Commission *conditionally* exacts from the charterer on account of any possible additional excess profit rate beyond the excess profits rate covered by § 709(a) of the 1936 Act.

(f) The Congressional excess profits capture provision in § 709(a) was, as appears on its face, designed to reach 50% of the normal profits earned by the charterer before it had deducted from such profits any sums due to the Government on account of excess profits due under an additional excess profits rate exacted by the Commission exercising its contractual powers under § 5(b) of the 1946 Act. It would not serve the Congressional design in § 709 (a) of the 1936 Act, to give to the Commission a smaller percentage of additional excess profits than either the Commission, or the charterer, or an average, intelligent reader would expect from reading Contract No. MCe-41881. More important, it would produce an anomalous, unforeseen, and almost distorted application of the broad power conferred upon the Commission by § 5(b) of the 1946 Act. Suppositious figures will serve to illustrate, and, it seems to me, prove, the point. Let use suppose the cumulative voyage profits were $300 per day. Under the method proposed by what I have called the subtle argument what would happen is that the Commission would first take $50 (representing 25% of the second and third hundred dollars) and then would take $125 (representing 50% of the remaining $250), or a total of $175. But under the method which seems to me more consonant with what Congress authorized, and what the parties contemplated, the Commission would take $50 for the first hundred dollars, and $150, or $75 each,

for the second and third hundred dollars, or a total of $200.

8. In the foregoing reasoning there has been a necessary anticipation of the correct reading of § 709(a) of the 1936 Act. As I have construed § 709(a), I, in agreement with all the judges who have previously construed it, have accepted their view that its provisions are mandatory and require the Commission so to contract as to give the Government as a *minimum* 50% of the excess profits according to the prescribed formula. *Dichman, Wright & Pugh, Inc.* v. *U. S.*, S.D.N.Y., 144 F. Supp. 922, 925; *U. S.* v. *East Harbor Trading Corp.*, S.D.N.Y., 190 F. Supp. 245, 249; and *American Export Lines, Inc.* v. *U. S.*, Ct. of Cl., 290 F. (2d) 925, 930. It is a statutory section to diminish, not to increase, charterers' windfalls. It is for the benefit of the Government, and to the possible detriment of private parties. I also accept the views of my predecessors that § 709(a) does not *ex proprio vigore* give to the Commission any authority whatsoever to set a different rate than the 50% rate. In that sense, and only in that sense, it is a *maximum* provision. If some of my predecessors implied, which I do not believe that they did imply, that the letter of § 709(a) of the 1936 Act, or the overtones of that section, somehow inhibited the Commission from using § 5(b) of the 1946 Act to exact at additional excess profits rates shares of profits not denominated in § 709(a) of the 1936 Act, I would not accept that implication. Nor would I accept the view that by implication, indirection, or otherwise § 709(a) can be utilized by a charterer to pay less than it agreed by contract.

9. I have not yet dealt with another aspect of § 5(b) of the 1946 statute. The Government has argued that the contract at bar is defective because it does not follow a command in § 5(b) that it fix a charter rate not "less than the world market charter rate for similar vessels." That argument is unsound. The world market rate is mandatory

only where "the affirmative vote of not less than four members of the Commission" is to charge "less than 15 per centum per annum of the statutory sales price." *Dichman, Wright & Pugh, Inc.* v. *U. S.*, S.D.N.Y., 144 F. Supp. 922, 925; *U. S.* v. *East Harbor Trading Corp*, S.D.N.Y., 190 F. Supp. 245, 248; *American Export Lines Inc.* v. *U. S.*, 290 F. (2d) 925, 929-930.

10. The foregoing conclusions may be summarized to the effect that the contract at bar was valid under all relevant statutes, and represented the objective assent of the parties to the terms as there stated and here interpreted.

11. If some appellate court concludes that the statement in the immediately preceding conclusion is erroneous, it is far from clear to me that Eastern would gain any advantage. If some provisions in Part II § 13 of the charter are repugnant to the 1936 or 1946 statute, I conclude that, despite the contrary *obiter dictum* of Judge Learned Hand in *Sword Line* v. *U. S.*, 2nd Cir., 228 F. (2d) 344, 346, column 1, "no contract was ever made, because the section [§ 709(a) of the 1936 Act] made the libellant's [sic] promise unenforceable, and there were therefore no mutual promises." My conclusion is based on the premise that if a statutory restriction prohibited the Commission from bargaining to recoup a larger share of excess profits than the 50% covered by § 709(a) of the 1936 Act, the Commission, so far as appears, well might have chosen to charter the vessels only if the charterer paid, say, more than 15 per centum of the statutory sales price (see Madden, J., dissenting, in *American Export Lines, Inc.* v. *U. S.*, Ct. of Cl., 290 F. (2d) 925, 932) or, say, the prevailing world market rates.

12. If a contract were never made, then the Government is now entitled to recover on a *quantum valebat basis*. If, as may be the situation, the fair rental value of the vessels chartered equals the 1946-1947 prevailing world market rate, the Government's quasi-contractual claim *prima facie*

would be for double the charter rate, that is (according to the cross-libel) $2,298,607.00 instead of $1,125,808.08. However, no doubt, a court, mindful of principles loosely called equitable estoppel, would not readily permit the Commission to achieve by a quasi-contractual claim a larger sum than it could have received on a contractual claim if the Commission's powers had not been challenged under § 709(a).

13. This Court has not now before it testimony necessary for disposing of libelant's third cause of action, and cross-libelant's second, third, and fourth causes of action. This Court will hold a hearing to receive such testimony on Monday, March 26, 1962 at 10 A.M., unless before that date the parties stipulate for some other disposition of the aforesaid causes of action.

14. Finally, this Court notes, by way of summation, that, despite the involved pattern of statutory and contractual provisions, the dominant thread in this controversy is plain. The Government had vessels which had a fair charter hire of over 2 million dollars. It did not compel anyone to charter those vessels. Congress authorized the Commission to offer those vessels for charter. The Commission, if it followed either the method that Judge Dimock and other federal judges have believed authorized, or the alternative method that I have believed permissible, was free to fix rates which would have yielded the full 2 million dollars or more. Libelant's claim is that the Commission followed an unauthorized method. I do not agree. But if I were wrong, the error of the Commission was not that it failed to follow a Congressional mandate intended to benefit libelant or others in its class. The error was that it failed to follow a Congressional mandate requiring the Commission to collect some excess profits specifically under one section and other excess profits (if agreed upon) under another section, and to point clearly which section gave authority for each part of the charter. If the methods used

by the Commission were *ultra vires*, and the rates were unauthorized, then there was no contract. And the libelant is in the anomalous position of being bound to pay the full fair value of the rental of the ships unless, as I believe, the Commission is estopped from demanding more than it was willing to take under a contract, now asserted to be vulnerable due to the most recondite technicality.

F. Adjudications

This Court now makes the following adjudications which at an appropriate time can be incorporated in a final judgment based upon the whole case, but which, unless counsel otherwise request, will not be now set forth in a formal, appealable, partial judgment.

1. Eastern's first cause of action in its libel is dismissed on the merits.

2. Eastern's second cause of action in its libel is dismissed on the merits.

3. Eastern's third cause of action in its libel is to stand awaiting the presentation of testimony at a plenary trial.

4. The Government's first cause of action in its cross-libel is dismissed on the merits.

5. The Government's second, third, and fourth causes of action in its cross-libel are to stand awaiting the presentation of testimony at a plenary trial.

6. Except insofar as they ask dismissal of the Government's first cause of action in its cross-libel, Eastern's "Exceptions to Cross-Libel" and its "Exceptive Allegations to the Cross-Libel" are denied, without prejudice to renewal at the plenary trial.

/s/ C. E. Wyzanski, Jr. D.J.
United States District Judge

Volume I. Document 15

[Caption Omitted]

Findings of Fact and Conclusions of Law Supplementary to the Opinion of January 15, 1962

May 2, 1962

WYZANSKI, D. J.

1. On January 15, 1962 this Court issued an opinion that the final judgment when entered herein should include the dismissal of libelant's first and second causes of action and the dismissal of respondent's first cause of action. This opinion is now amended in the following respects:

(a) In Section E, finding 14, pages 16 and 17, the second sentence of the finding is amended to read, "The Government had vessels which it alleges had a fair charter hire of over 2 million dollars."

(b) Section F, Adjudications, paragraph 2, page 17 is deleted. At the time the opinion was written Eastern had not had adequate opportunity to present evidence with respect to its second cause of action.

2. March 23, 1962 the parties by stipulation settled libelant's third cause of action and respondent's third and fourth causes of action. March 26, 1962 the Court entered a decree based on that stipulation.

3. There now remains for consideration only libelant's second cause of action. This cause of action, already summarized in the main opinion, has two aspects. The broader contention is that with respect to the year 1947 the Commission should have charged for all vessels chartered by Eastern during that year a rate calculated upon the accumulative net voyages profits for the year of all such vessels. The narrower contention is that the Commission had no right to require two separate accountings of the voyage profits of, respectively, the S. S. ISAAC SHARPLESS and the S. S. WASHINGTON IRVING. Each claim turns on the ques-

tion whether the Government had an unfettered right to terminate the bareboat charters.

4. As the opinion of January 15, 1962 notes, on October 1, 1946 Eastern and the Commission entered into bareboat charters, Contract No. MCe-41881, for the use of certain Government owned vessels. Many of the terms of that Contract are set out in the opinion and need not be repeated. But it is now appropriate to quote Part II, Clauses 14 and 27, of the Contract:

> "CLAUSE 14. *Termination.* Either the Owner or the Charterer may terminate the period of use of any of the vessels by giving written notice to the other party at least fifteen (15) days prior to the termination of any voyage hereunder, in which event the vessel shall be redelivered at the port of redelivery provided for in Clause G of Part I hereof upon termination of the voyage during which such notice is given."
>
> "CLAUSE 27. *Cancellation or Modification by Mutual Consent: Waivers.* This agreement may be terminated, modified, or amended at any time by mutual consent."

5. While Eastern was using the chartered vessels, the Commission on August 15, 1947 sent to Eastern and other charterers, a telegram stating:

> "The use of any and all vessels chartered to your company pursuant to the provisions of Shipsalesdemise 303 is hereby terminated as follows:
>
> With respect to vessels whose voyages terminate on or after August 31, 1947 this telegram shall be deemed to be the owner's fifteen days notice of cancellation pursuant to Clause 14 of Part II of the Charter.
>
> With respect to vessels whose voyages have terminated or will terminate prior to August 31, 1947 this

telegram will also be deemed to be the owner's fifteen days notice of cancellation pursuant to said Clause 14 and/or Clause C(2) of Part I. You will be given opportunity to continue the use of vessels under charter pursuant to new terms and conditions to be announced within the next few days.

If within seven days from date hereof you advise as to those vessels which are engaged solely in domestic trade, the Commission will except such vessels from this notice."

6. The Commission on August 20, 1947 sent to Eastern and other charterers a telegram stating:

"Pursuant to the Commission notice of August 15, 1947, as to the termination of the use of all vessels chartered to your company subject to the provisions of Shipsalesdemise 303, the U. S. Maritime Commission today authorized an addendum to its bareboat charter agreement for warbuilt vessels, "Shipsalesdemise 303", effective as of September 1, 1947, providing substantially as follows:

1. Rates of basic and additional charter hire for foreign trade remain unchanged stop

2. Period of about six months, but no voyages to be commenced after February 29, 1948, subject to termination as to any vessels on fifteen days' notice by either party to be given after a period of sixty days from the date when the vessel becomes subject to the provisions of the addendum stop

8. The payment of additional charter hire pursuant to Clause 13 shall be computed separately for those voyages commenced prior to September 1, 1947, and those which commence under the addendum to the charter agreement herein authorized, with the understanding that the Maritime Commission may permit charterers to establish reserves for repair

expenses and expenses usually covered by P & I insurance stop

Please advise not later than August 27, 1947, if you accept the addendum as specified herein. Upon written notice being given of such acceptance, you are authorized to continue the use of any vessels now chartered to you pursuant to Shipsalesdemise 303 under the present terms and conditions as to any approved voyages commencing prior to September 1, 1947, but the voyages of any new vessel allocations after August 20, 1947, shall be under the terms and conditions of the addendum. If such written notice of acceptance of the addendum is not received by the Commission on or before August 27, 1947 all vessels, pursuant to the provisions of Shipsalesdemise 303, shall be redelivered in accordance with the terms of such charter upon completion of approved voyages commenced prior to September 1, 1947."

7. August 25, 1947, Eastern sent a telegram to the Commission stating:

"Retel yours of August 15 and August 20 we accept addendum specified your wire of August 20 and have all vessels now chartered to us pursuant to Ship Sales Demise Charter Form 303 committed load coal during September with one exception which vessel loads early October."

8. In October, 1947, the Commission and Eastern executed Addendum No. 7 to the charter which embodied the terms of the foregoing telegrams. The relevant terms of that Addendum follow:

"WHEREAS, on August 15, 1947, the Owner served notice of termination pursuant to Clause 14, Part II, with respect to vessels hereunder operating in foreign trades, and simultaneously advised that the Charterer would be given an opportunity to continue the use of

such vessels under charter in accordance with new terms and conditions to be announced, and

WHEREAS, such new terms and conditions were promulgated by the Owner on August 20, 1947; and were accepted by the Charterer, with respect to the vessels hereinafter named, and

WHEREAS, the parties hereto desire to amend this Agreement accordingly.

NOW, THEREFORE, in consideration of the premises, this Agreement is hereby amended as follows with respect to vessels engaged in foreign trades, which are listed on the attached schedule marked "Exhibit A" and made a part hereof by reference:

• • • • •

III. *Additional Charter Hire.* Additional charter hire, pursuant to Clause 13, Part II, shall be computed, accounted for and paid separately for voyages which are subject to the terms of this addendum, which shall be treated for accounting purposes as if it constituted a separate charter between the parties."

The vessels remained under the charter, as so amended, and none was redelivered.

9. During the year 1947 the voyages of Eastern's chartered vessels which commenced prior to September 1, 1947, resulted in profits for which, under the terms of clause 13 of the charter, libelant became obligated to pay additional charter hire in the amount of approximately $516,696. The voyages which commenced after September 1, 1947 resulted in losses of approximately $118,000 (after adjustments required as a result of the stipulated settlement of libelant's third cause of action).

10. On July 10 and August 2, 1947, respectively, Eastern entered into single voyage charters with Association Technique De L'Importation Charbonniere ("ATIC"),

an agency of the French Government, for the carriage of two full cargoes of coal from Baltimore to French ports. These voyage charters named the bareboat-chartered vessels SS ISAAC SHARPLESS and SS WASHINGTON IRVING, with contemplated loading of the first vessel between August 18-28, 1947, and of the second vessel between September 1-13, 1947. These voyage charters were submitted to, and approved by, the Director of Traffic of the Maritime Commission prior to August 15, 1947, in accordance with clause 22 of the charters, and the regulations quoted below.

11. In June of 1946, and subsequently, the Commission issued regulations applicable to all bareboat charters, requiring that copies of all voyage charters which contemplated the use of the chartered vessels be submitted to the Director of Traffic for approval before such voyage charters were executed. The provisions of these regulations were summarized in a circular letter to all bareboat charterers dated February 10, 1947, reading in part as follows:

> "In order that there be no further misunderstandings we bring to your attention a few of the requirements which *must* be adhered to in order to avoid violation of your bareboat charter.
>
> (1) *All* proposed voyages must be submitted to this office for approval *prior* to the actual fixing of the vessel. This may be done by telephone or telegram, setting forth rates, terms and conditions of the proposed venture. (It is suggested that your offers for fixtures be made subject to the approval of the Maritime Commission.)
>
> (2) After a proposed voyage with its attendant rates, terms and conditions has been approved, a certified copy of all charters, booking agreements, or contracts of affreightment shall be submitted to this office. (If this has not been done, copies of all

charters, etc., should be submitted to this office immediately. (Emphasis in original.)

* * * * *

Bareboat charterers who fail to comply with the foregoing requirements and the provisions set forth in W.S.A. Bareboat Regulation No. 3 may violate the provisions of their fleet charter and incur the penalties set forth therein. Kindly be guided accordingly."

12. The voyage charters with ATIC each contained clauses reading as follows:

"29. It is understood that the owners of the vessel (United States and/or Maritime Commission) has the right under Clause #14 of the bareboat charter existing between the owners of the vessel and MYSTIC STEAMSHIP DIVISION, EASTERN GAS & FUEL ASSOCIATES, Bareboat Chartered Owner, to terminate the period of use of the vessel by giving written notice to the bareboat charterers at least 15 days prior to the termination of any voyage. Should the owner of the vessel exercise this prerogative or any other prerogatives it may have under the bareboat charter existing with MYSTIC STEAMSHIP DIVISION, EASTERN GAS & FUEL ASSOCIATES, that might frustrate the performance of this charter, then this charter to be cancelled without penalty or liability on the part of any of the parties hereto. The Bareboat Chartered Owners shall have the option of substituting a similar Liberty steamer in a similar position, if this charter is so cancelled.

30. This contract is subject to the approval of the U. S. Maritime Commission."

13. Eastern and ATIC entered into said two voyage charters with knowledge of Clause 29. The voyages were commenced and completed after September 1, 1947, in accordance with the voyage charter terms, and the two vessels were thereupon redelivered to the Maritime Com-

mission under the bareboat charter without making any further voyages. Libelant suffered losses as a result of the two voyages and the redelivery expenses incident thereto.

14. After executing without protest Addendum No. 7, Eastern consistently accounted for additional hire in accordance with its terms. Not until more than seven years had elapsed, that is on February 19, 1955, did Eastern challenge the Addendum or the accounting thereunder.

Conclusions

On the foregoing facts my first conclusion is that, as plainly appears, the Commission always reserved the right, capriciously or otherwise, to terminate the period of use of any of the vessels. Neither in any statute or contract was there an express or implied restriction upon its power. Just as a landlord with a reserved power to terminate a lease has the right to do so even if his object is to re-let even to the same tenant at a higher rental, so the Commission had the right to terminate even if it hoped that the charterer would immediately re-charter on terms less favorable to the charterer. The argument to the contrary seems to me to have no weight. And even if it did have, the charterer, which was uncoerced, elected not to press the point when it executed Addendum No. 7.

My second conclusion is that Eastern has no special ground of complaint with respect to the effect of the termination upon its voyage charters with ATIC. These voyage charters were, it is true, approved by the Commission. But the voyage charters in the most explicit terms of Clause 29 recognized the Commission's right of termination. In approving the voyage charters the Commission approved them as they stood, with the Commission's right of termination expressly reserved.

The second cause of action of libel is dismissed on the merits.

/s/ C. WYZANSKI D. J.
United States District Judge

Volume I. Document 16

[Caption Omitted]

Final Judgment

[May 2, 1962]

WHEREAS the parties hereto have compromised and settled the THIRD separate cause of action set forth in the libel herein and the THIRD and FOURTH separate causes of action set forth in the cross-libel herein, and said settlement has been embodied in a consent decree heretofore approved and entered on March 26, 1962; and

WHEREAS the parties have stipulated cross-libelant's damages in the amount of $64,000 on said SECOND separate cause of action as set forth in the cross-libel herein; and

WHEREAS it appears to the Court from the pleadings, and exhibits on file, the Court having heard the arguments of counsel, and due deliberation having been had thereon, that there is no genuine issue as to any material fact and that cross-libelant is entitled to judgment on its SECOND separate cause of action as a matter of law; and

WHEREAS the Court has filed an opinion on January 15, 1962, and a supplementary opinion, including findings of fact and conclusions of law, on May 2, 1962; now, therefore, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

1. That the opinions of this Court heretofore filed on January 15, 1962, and on May 2, 1962, be and the same hereby are adopted as the Court's findings of fact and conclusions of law, pursuant to Rule 46½ of the Rules of Practice in Admiralty and Maritime Cases of the Supreme Court of the United States;

2. That there is no just reason for delay in entering final judgment upon the FIRST and SECOND separate causes of action set forth in the libel herein, and on the FIRST and

SECOND separate causes of action set forth in the cross-libel herein, and it is expressly directed that final judgment on said causes of action be entered;

3. That the FIRST separate cause of action set forth in the libel herein is dismissed on the merits;

4. That the SECOND separate cause of action set forth in the libel herein is dismissed on the merits;

5. That the FIRST separate cause of action set forth in the cross-libel herein is dismissed on the merits;

6. That judgment be entered in favor of cross-libelant United States of America on the SECOND separate cause of action set forth in the cross-libel herein in the sum of $64,000, together with interest at the rate of six percent (6%) per annum from the date of this decree, until paid, together with cross-libelant's costs to be taxed.

/s/ CHARLES E. WYZANSKI, JR.
United States District Judge

Dated: May 2, 1962

Volume II Exhibit E-1

[Caption Omitted]

AFFIDAVIT IN SUPPORT OF EXCEPTIVE ALLEGATIONS

Commonwealth of Massachusetts }
Suffolk } ss

Robert A. Caswell, being duly sworn, deposes and says:

1. I am assistant manager of the accounting department of Eastern Gas and Fuel Associates (hereinafter referred to as "the Company"), a trust organized under the laws of the State of Massachusetts. I have been associated with the Company for twenty-nine years and am familiar with the background of the facts set forth in this affidavit, which is submitted in support of exceptive allegations to the cross-libel of the United States in the above-entitled action.

2. The Company and the former United States Maritime Commission ("Maritime") as of October 1, 1946 entered into a bareboat charter, Contract No. MCc-41881, for the use of certain Government-owned vessels. The vessels were operated by the company's "Mystic Steamship Division".

Various addenda to this agreement were subsequently executed, affecting the number of vessels chartered and other terms. The charter provided for two types of hire, the first being described as "basic charter hire", which was fixed in the charter at 15 per cent of the unadjusted statutory sales price of each vessel, computed by Maritime under the Merchant Ship Sales Act of 1946. Basic hire was billed to the Company by Maritime and paid monthly in full in the amount of $707,794.90. Martime's auditors have received and approved these payments and have never made claim against the Company for basic charter hire in excess of that already paid. The first cause of

action of the cross-libel asserts that basic charter hire based on an assumed "world market charter hire rate" should have been $2,298,680.07. This amount is equal to 48.72 per cent of the statutory sales price of the vessels per annum.

3. In addition to basic charter hire, the charter provided that the Company would pay "additional charter hire" pursuant to section 709 of the Merchant Marine Act, 1936. This additional charter hire was payable out of "cumulative net voyage profits" earned from the operation of the vessels in excess of a return of 10 per cent on the Company's "capital necessarily employed" in the business of the chartered vessels. The Company periodically during the charter, and thereafter, submitted accountings of profits and losses on the basis of which tentative payments and credits of additional charter hire were made from time to time. Relevant provisions from the charter and the regulations relating to these payments are attached respectively as Attachments "A" and "B" to this affidavit. Additional charter hire was tentatively paid on account by the Company in the amount of $464,876.09. The Company contends that it has made overpayments of additional charter hire of approximately $280,000, and it seeks recovery thereof in its libel. The Government, however, disputes this and asserts three claims by cross-libel for additional charter hire which are described below.

4. The Company accountings for additional charter hire have been fully reviewed by Maritime's auditors and there is no major dispute with respect to the basic figures, *i.e.*, what items are properly expense, what are income, what figure represents capital necessarily employed, etc. The unsettled disputes involve only questions of statutory and contract interpretation.

5. Accountings for additional charter hire were prepared by the Company and audited by Maritime. These

accountings set forth separately, for purposes of computing additional charter hire, the results of operations of two vessels in the coastwise trade and operations of nine vessels in the offshore trade. The operations of the two coastwise vessels resulted in a loss of $6,186 in 1946 and a profit, subject to additional charter hire after allowable return of 10 per cent, of $29,405 in 1947. The regulations of Maritime, based on section 709 of the 1936 Act, permitted the loss in 1946 to be offset against the profit in 1947. The fourth cause of action in the cross-libel seems to assert that Maritime misinterpreted the statute in permitting the loss in 1946 to be offset against the profit in 1947.

6. The operation of the nine vessels in the offshore trade resulted in a loss of $5,033 in 1946 and a profit of $717,741 in 1947. The third cause of action in the cross-libel seems to be based upon the assertion that the offset of the 1947 profits and the 1946 losses was contrary to statute. The same issue is involved in the third cause of action as in the fourth cause of action, except that the latter concerns the operation of vessels in the coastwise trade and the former the operations of vessels in the offshore trade.

7. As noted above, operations in the offshore trade during the first eight months of 1947 showed a profit of $717,741. Section 709 of the Merchant Marine Act, 1936, provided that every charter made under the Act should contain a provision that the charterer pay additional charter hire equal to 50 per cent of the cumulative net voyage profit. Nevertheless, the charter provided that Maritime should share in these profits at progressive rates of 50, 75 and 90 per cent. This provision of the charter was protested by the industry when the charter was adopted, and clause 13 of the charter and the regulations of Maritime (quoted in the attachments hereto) reserved all disputes until final audit of the accountings. The claim for $63,430.59, set forth in the second cause of action of the cross-libel, assumes the right to recover at the

progressive rates of additional charter hire in excess of the rate prescribed by the statute.

8. The freight and charter rates negotiated by the Company for carriage of cargo on the chartered vessels were based on Maritime's 15 per cent basic charter rates and were in many cases required to be, and were, approved by Maritime. Two of the vessels were time chartered to the United States War Department, as follows:

Vessel	Delivery Date	Redelivery Date	Number of Days
SS ANDREW STEVENSON	January 8, 1947	April 25, 1948	108
SS JAMES BOWDOIN	March 13, 1947	June 11, 1947	91

These charters, pursuant to the clause quoted in Attachment "C" hereto, provided that the time charter rate, payable by the War Department, would be increased to compensate for any increase in the 15 per cent basic charter hire paid to Maritime.

(Signed) ROBERT A. CASWELL
Robert A. Caswell

Subscribed and sworn to before me this
29th day of September, 1960.

(Signed) WILLIAM M. BRADY
Notary Public

My Commission Expires December 13, 1963

[NOTE: Attachments A & B mentioned in the above affidavit have not been reproduced but are quoted in the brief where relevant. Attachment C appears *infra*, p. 97.]

Volume II Exhibit E-23

[Caption Omitted]

SUPPLEMENTAL AFFIDAVIT OF ROBERT A. CASWELL

Commonwealth of Massachusetts }
Suffolk } ss.

ROBERT A. CASWELL, being duly sworn, deposes and says:

1. I am Assistant Manager of the Accounting Department of Eastern Gas and Fuel Associates, a trust organized under the laws of the State of Massachusetts (hereinafter referred to as the "Company"). This affidavit supplements my prior affidavit sworn to herein on September 29, 1960.

2. My attention has been called to a statement of the position of the Government in connection with the sliding scale of additional charter hire set forth in its memorandum in opposition to cross-respondents' exceptions, pages 56-58, as follows:

> Section 709(a), by its terms, was operative only after the charterer's income had been used (1) to pay "the charter hire reserved in the charter"; (2) to pay "the charterer's fair and reasonable overhead expenses"; and (3) to pay the charterer a 10 percent return on his investment. Thus, section 709(a) did not restrict either the amount of "charter hire reserved in the charter," or the form or manner in which such contractual charter hire could be charged. Section 709 clearly contemplated two types of charter hire: a total *contractually* stipulated "charter hire" (whether a percentage of profits or a firm monthly rate or a combination of the two) in an amount unlimited by the terms of section 709(a), and the statutory "additional charter hire" of one-half of the excessive profits.

* * * * *

> It results that the combined firm or "basic hire" [15 percent of statutory sales price] and the 25 and 40 percent portions of [sliding scale] constituted the total "charter hire reserved in the charter" as referred to in section 709(a). Never has the Government contended that the 25 and 40 percent portions of the 75 percent and 90 percent sliding scale which Eastern Gas attacks was charged under section 709(a) or otherwise than under section 5(b).

The charter and the regulations are completely inconsistent with this statement of the Government's position. However, without accepting its correctness or validity, the accounting consequences that flow from it, if it be correct and lawful, are noted as follows:

3. Basic charter hire (fixed at 15 percent of statutory sales price, which the Company has paid in full) is an *expense of operation* which is properly deducted before computing "additional charter hire" which is paid out of profits. If, as the statements from the Government's brief suggest, the 25 and 40 percent portions of the sliding scale rates are treated as expense in the same manner as the 15 percent basic charter hire, those portions of sliding scale would likewise have to be computed and deducted as an expense before calculating the additional charter hire due at the 50 percent rate. Such procedure is not provided for in any accounting regulations or otherwise, and it was never so computed by the Company. However, the net result of treating the 25 and 40 percent portions of additional charter hire as an expense is to reduce the Company's liability for additional charter hire by $80,171.54, which is more than, and thus eliminates, the claim for additional charter hire of $63,430.59 at the sliding scale rates asserted by the Government in paragraph Twelfth of the cross-libel. It also eliminates the claim for $4,530.10 and $3,063.09, respectively, contained in paragraphs Seventeenth and Twenty-third of the cross-libel.

4. The audit report of the accountings of the Company made by the Maritime Administration, dated August 20, 1954, shows a computation of additional charter hire in the offshore trade, as follows:

SHIPSALESDEMISE-303—Dry Cargo, Offshore—
(1782 Terminated Days):

$178,200.00	at 50%	$ 89,100.00
356,400.00	at 75%	267,300.00
178,107.72	at 90%	160,296.95
$712,707.72		$516,696.95

The profit subject to additional charter hire, shown in the first column of this tabulation, is $712,707.72. The additional charter hire, computed at the sliding scale rates, shown in the second column, is $516,696.95. Of this latter figure, $356,353.86 constitutes additional charter hire at the 50 percent rate, and the balance of $160,343.09 constitutes additional charter hire at 25 and 40 percent sliding scale rates, which the Government's brief says is really "charter hire reserved in the charter" to be treated as an expense in the same manner as the 15 percent basic hire. Assuming this to be correct, the sum of $160,343.09 must be deducted as an expense before computing profit subject to additional charter hire at the 50 percent rate. Such a deduction reduces the profit subject to additional charter hire from $712,707.72, as shown above, to $552,364.63. Additional charter hire at 50 percent on this sum would equal $276,182.31.

5. The total charter hire thus due (other than basic hire at the rate of 15 percent of the statutory sales price, which has been paid in full), if the Government's theory is correct and in accordance with law, would be the sum of the following:

(a) 25 and 40 percent portions of sliding scale	$160,343.09
(b) 50 percent of net voyage profits after deduction of (1) basic 15 percent hire, and (2) 25 and 40 percent portions of sliding scale ("charter hire reserved in the charter")	276,182.31
	$436,525.40

As pointed out in my earlier affidavit, and in paragraph Twelfth of the cross-libel, the Company has already tentatively paid additional charter hire of $464,876.09, which exceeds the $436,525.40 shown above to be due on the accounting theory suggested in the Government's brief.

(Signed) ROBERT A. CASWELL
Robert A. Caswell

Subscribed and sworn to before me this
21st day of November, 1960.
WILLIAM M. BRADY
Notary Public

My Commission Expires December 13, 1963.

Volume II. Exhibit E-17
[Memoranda and Minutes of Maritime Commission Meetings]

[Memorandum of August 7, 1946 from Charter Section to Maritime Commission]

[To] United States Maritime Commission

[From] Acting Chief, Charter Section August 7, 1946

Report on WSA Interim Chartering and Recommendations in Connection With Maritime Commission Chartering Under the Ship Sales Act

Pending legal and functional abilities of the Maritime Commission to consummate sales first and charters secondly, the War Shipping Administration on April 15 inaugurated an interim charter program approved by the Maritime Commission, and delivered the first vessel on April 23, the date on which General Order No. 60 was published in the Federal Register.

It was hoped and expected by both the War Shipping Administration and the Maritime Commission that such interim chartering would cease on June 30 or one week after expiration of the 60 day period required by the Ship Sales Act before chartering could be effected. However, about the middle of June it became apparent that the Maritime Commisison was not ready for ship sales charters and arrangements were made with the Commission to continue chartering for delivery during the month of July. About July 15 the same situation and conditions obtained and arrangements were agreed whereby WSA would continue interim chartering for delivery during the month of August.

Through July 31, 604 vessels had been delivered to bareboat charterers, and for delivery during the month of August 196 vessels have already been committed, making a total of 800 vessels that will have been delivered by August 31 when WSA functions are absorbed by the Maritime Commission.

The following table shows the deliveries in each month broken down into the two main categories of charterers, namely, berth services and bulk operators; also the principal types of vessels chartered to each category.

Position as of August 6, 1946

	Liners					Bulk Carriers			
	C-Types	Vict	EC-2	Others*	Total	EC-2	Others**	Total	Grand Total
April	5	2	4	..	11	..	..	0	11
May	38	28	50	3	119	45	2	47	166
June	35	46	39	24	144	82	8	90	234
July	32	32	20	24	108	74	11	85	193
Aug. (estimated)	37	10	6	14	67	98	28	126	193
	147	118	119	65	449	299	49	384	797

* Includes 1 Victory comb. animal & cargo vessel
" 6 Liberty comb. animal & cargo vessel
" 1 Pass. ship (George Washington)
" 48 C1-M-AV1 type vessels
" 1 N-3 type vessel
" 2 R-2s
" 3 R1-M-AV3 type vessels
" 3 Reefers (United Fruit Co. type)

Total 65

** Includes 6 Victory types
" 3 C-Types
" 21 Vict Animal Carriers
" 1 C-4 Animal Carriers
" 6 Liberty Animal Carriers
" 8 C1-M-AV1 type vessels
" 4 C-2 Reefers

Total 49

The original charter plan was of an experimental nature to test the rate at which the government could get out of business, and at the beginning of the program in April prospective charterers were hesitant about chartering. To carry out the mandate of Congress to transfer vessel operation from government interest to private interest, the WSA persuaded a number of berth service charterers to abandon general agency operation in favor of bareboat chartering to cover their entire berth service requirements. Although several operators wished to retain general agency operation for government account parallel with private operation of their owned ships, this was disallowed for obvious reasons. At present every foreign trade berth

service, with the exception of one, is now operating for private account either with owned ships, bareboat chartered ships or a combination of both.

Preference in the number and type of vessels was given to the berth operators who owned vessels or had applications to purchase vessels. Due to the limitation on physical capabilities of delivering vessels, namely, about 200 ships per month, restrictions and quotas had to be established on the bulk operators for deliveries during June, July and August.

From the foregoing table it will be seen that during April, May and June vessels chartered to bulk operators amounted to only one-third of the total; during July about 46% of the total in that month and during August an estimated 70%. This is explained by the fact that most of the berth services will have had their tonnage requirements practically filled, so that from now on the largest portion of delivery capacity may be used for bulk cargo carriage which is by far the largest responsibility of WSA under the Government guarantee of tonnage for relief and rehabilitation programs. The other remaining government operation activities comprise military requirements, intercoastal and coastwise services, and the Alaskan trade. The Puerto Rican and Hawaiian services are under private operation including bareboat vessels, and there is some question about the financial results in the Puerto Rican service.

If the Commission's policy is to continue the process of getting the government out of business, it is presumed the principal objective is the sale of vessels and secondly, the bareboat charter of vessels. It will be noted that of the vessels under charter at the end of August, 150 are of the "C" type, most of which are covered by applications of American citizens for purchase. About 25 vessels of other types are also under charter to applicants for purchase of such vessels. Therefore about 150 of these vessels are under charter only because the Maritime Commission has not sold and delivered them.

There has been much discussion of the policy the Maritime Commission should adopt in respect of ship sales charters, particularly the basic charter rate and additional charter hire through recapture, and the financial requirements of bareboat charter applicants.

It is expected that bulk cargo requirements, particularly coal and grain from the United States for relief and rehabilitation purposes, will average about 300 cargoes per month between now and June 30, 1947. United States Government owned tonnage has had to be provided for at least 80% of this movement. During the month of July there were 289 coal cargoes and 79 grain cargoes, totalling 368 of which 66 were carried by foreign ships, and 302 by U. S. vessels. U. S. privately owned vessels carried six cargoes, bareboat chartered vessels carried 87 cargoes, and WSA General Agency ships carried 209 cargoes. A recapitulation table showing percentages follows:

July

	Coal		Grain	
	Ships	%	Ships	%
Foreign	43	.148	23	.291
U. S. Private	3	.011	3	.038
Bareboat	76	.263	11	.14
W.S.A.	167	.578	42	.531
	289	1.000%	79	1.000%

It is estimated that a total of between 300 and 400 Liberty type vessels will be required to carry the same proportion of such grain and coal cargoes as WSA carried during the month of July, namely about 200 cargoes. Assuming at least 200 vessels will be sold to foreign purchasers and delivered during the last four months of the calendar year (50 vessels per month), and that at least 200 vessels will be sold and delivered to American citizens during the same period (50 vessels per month), the survey and inventory

capabilities (estimated at 250 total vessels per month) allocable to bareboat chartering of ships would not exceed 150 vessels per month for such period beginning September 1st.

Again assuming that the ayerage of 50 vessels per month delivered to foreign purchasers would load coal or grain, the requirements for WSA ships for such cargoes would be reduced from 200 to 150 vessels per month—or about 250-300 vessels in continuous round trip operation. If 100 of an assumed 150 vessels delivered under bareboat charter per month were used for coal and grain cargoes, requirements for WSA General Agency ships for such cargoes would virtually be eliminated by December of this year, provided there are no large fluctuations in the cargo programs.

On the other hand if chartering were restricted and reversed by adoption of a policy of impractical and excessive recapture provisions or unnecessarily high financial requirements for bareboat charters, resulting in the redelivery during the September/November period of a large number of the 800 vessels under charter at August 31 (estimated about 100 vessels per month for delivery, excluding the approximate 200 to be sold to citizens), the extent of the retrogression, chaos and waste becomes apparent.

Grain, coal and other bulk commodities are not governed by conference rates but are open and governed by the laws of supply and demand. With foreign nations having more tonnage available through sales of U.S. vessels, it is natural that rates will decline from the levels which have in the past necessarily been set by WSA for vessels operated by WSA whose expense of operation is greater than that for privately operated vessels. It must be stressed that the voyage profits of the bulk operators are relatively low compared with those of most of the berth operators, and with an open world freight market on bulk cargoes, American bulk cargo operators should be offered the maximum

of opportunity in the private operation of war built ships as long as such ships are needed for world demands.

The rates on general cargo carried by the berth services are practically all governed by the respective line group conferences, and while many of the berth services are highly profitable with the full cargoes and rates prevailing today, some berth services in some of the trades are not highly remunerative but are fraught with both operating risks and traffic risks. While the number of risky or low remunerative berth services may be small at present, overtonnaging of the highly remunerative berth services is a real possibility which will have its effect upon earnings. To prevent excessive profits of bareboat vessels on highly remunerative berth services, it is not necessary to endanger American lines on the low remunerative berth services by imposing a high basic charter hire or a high percentage of straight recapture on all voyage profits.

RECOMMENDATIONS:

Therefore if the Maritime Commission is to adopt a sound policy and to undertake a successful chartering program thereunder consistent with the Ship Sales Act, the following is recommended:

1) Charter period about six months cancellable by either party on 15 days written notice.

2) Initial basic charter hire at the rate of 15% per annum on the unadjusted statutory sales price or the floor price on each vessel type whichever is the higher.

3) Additional charter hire to be:

(a) One-half of the average net voyage profit up to the first $200 per day ($100 each for Government and charterer, if earned) for the period under charter in excess of the 10% on the charterers capital necessarily employed in the business, and
(b) 90% of the excess over such $200 average net voyage profit per day.

4) Financial Requirements. (a) Net worth and net working capital of any charterer as determined by the Director of Finance (Operations) must be a minimum of $250,000 with which charterer may become eligible to bareboat charter up to a total of five vessels. (b) For each vessel in excess of 5 vessels, net working capital shall be increased by $25,000 each vessel. (c) A performance bond in the amount of $25,000 for each vessel under the fleet charter so that the cumulative amount of all bonds may be applicable to any ship or any event under the fleet charter.

5) Charterers must have the necessary ability, experience and character to qualify as determined by the Director of Operations and Traffic.

I have many times verbally explained the reasons and substantiations for the foregoing recommendations. In my opinion, the above recommendation for additional charter hire is the most effective way of preventing excessive profits at the same time offering the minimum which a bareboat charterer will accept. It will also prevent some of the Puerto Rican or other services from being thrown back to the Government, if basic hire or a higher rate of recapture is imposed. The profit risks of a bulk charterer are very real despite some ideas to the contrary, and the above plan has the distinct advantage over a straight 90 per cent recapture on all voyage profits, in that small voyage profits after a real risk are not confiscated. Comparative examples of the results of the proposals are as follows:

Liberty Type Vessels

		Division Under Fixed 90% Plan		Division Under Subject Plan		Initial Charter Hire to Gov't
Voy. Days	Voy. Profit	Charterer	Gov't	Charterer	Gov't	
30	1500	150	1350	750	750	8000
30	3000	300	2700	1500	1500	8000
30	6000	600	5400	3000	3000	8000
30	12000	1200	10800	3600	8400	8000
30	24000	2400	21600	4800	19200	8000
30	48000	4800	43200	7200	41800	8000
30	96000	9600	86400	12000	84000	8000

The foregoing recommendations are made with the view of

1) Stimulating sales to the maximum;

2) offering the charterer minimum terms acceptable;

3) preventing excess profits on highly lucrative special trades or berth cargo services without handicapping the low remunerative berth services; and

4) getting the Government out of the ship operating business.

For the reasons stated above, as a member of the Committee on charter policy and as Acting Chief of the Charter Section, I do not concur with the recommendations which I understand Commissioner McKeough, Mr. Skinner, Mr. Quinn and Mr. McDaniel are submitting as members of the Committee resulting from the Commission meeting on August 2 to which I was designated a member.

I also wish to stress the fact that unless these issues are determined very promptly and the machinery set in motion immediately under simplified procedure enabling the Chartering Section to secure prompt Commission approval of prospective charterers, deliveries during the month of September will be very limited and will not meet the chartering potential of qualified applicants.

In my opinion there is insufficient time to effect full September deliveries under the procedure presently set up under General Order No. 60 and Administrative Order 101, involving the processing and approval by the Commission of applications by each of about 60 prospective applicants. A recommendation to revise Administrative procedures will be submitted immediately.

/s/ D. B. DONALD
Dudley B. Donald
Acting Chief
Chartering Section

I CONCUR:
/s/ C. G. CORNWELL
C. G. Cornwell

[Memorandum of August 8, 1946 to Maritime Commission]

[To] United States Maritime Commission

[From] Special Charter Committee August 8, 1946

Interim Chartering Under Merchant Ship Sales Act of 1946

This Committee was appointed by the Commission at its regular meeting of July 30, 1946 for the purpose of making further study and submitting a report in connection with the above subject. This matter has been the subject of two memoranda to the Commission, one dated July 19, 1946 from another Special Committee and the other dated July 29, 1946 from Mr. Cornwell, Chairman of said Committee.

We have had a number of conferences in connection with this matter and have interviewed what might be termed a cross section of the Charterers involved.

BACKGROUND

The Agency Agreements were inaugurated during the War and hundreds of Government owned and chartered vessels were operated under these agreements for account of the War Shipping Administration. The vessels operated during this period carried government cargoes to a great extent. Under this arrangement the Agent collects all voyage revenues and pays all operating expenses on behalf of the War Shipping Administration for which the Agent receives a return for its services in the nature of fees and commissions.

There are now large cargoes moving on the berth services, both commercial and government cargoes are involved. There also are bulk cargoes, mostly coal and grain moving in both the "liner" and the "non-liner" services. UNRA and some of the foreign governments are the largest shippers of the bulk cargoes. The freight rates generally are high, very much higher than before the War.

The "war-built" vessels could not be chartered under the Merchant Ship Sales Act of 1946 until 60 days after April 23, 1946, as of which date there were published in the Federal Register the Statutory Sales Prices of the majority of the vessels of standard design. The War Shipping Administration began interim chartering as of April 16, 1946, thereafter withdrawing such of its vessels from the Agency agreements as there were Charterers to take them over.

The basic charter rate being charged by the War Shipping Administration is 15% of the mean of the Statutory Sales Price, unadjusted, and the floor price, plus the statutory additional charter hire of 50% of profits in excess of 10% of Capital necessarily employed in the business. While no formal statements of voyage operation have been submitted by these Charterers, sufficient data have been submitted informally to satisfy the majority of the Committee that the profits accruing to the Charterers generally have been exorbitant, *particularly in relation to the Capital employed in the business.* It also is generally conceded that a continuation of the agency operations would have been more profitable to the Government financially.

It is not believed that the Charterers handling bulk cargoes altogether will buy vessels for engaging in this class of operation permanently. Hence the adoption of charter operation over agency operation in this class of service, in our opinion, will avail the Commission nothing in selling its "war-built" vessels. Moreover, it would seem that any contention that a Charterer, during the emergency period of operation, would improve the Charterer's capital position sufficiently to enable him to buy, even one ship, for operation in any service would be an admission that more than a reasonable and equitable profit under said charter was expected.

It is the opinion of the majority of this Committee that it would have been in the public interest and in no way

detrimental to ultimate private ownership and operation if the War Shipping Administration had (a) continued during the emergency, with agency operation in the movement of all bulk cargoes and also such general cargoes as are moving outside of the area covered by liner-service operation, except, of course, such as those cargoes, if any, as could have been handled by American flag vessels owned by independent operators and (b) chartered to liner-service operators on a short term basis, at rates calculated to net only a reasonable profit to the charterer—sufficient vessels to augment said operators' fleet of owned vessels (pending the purchase and delivery of the required additional "war-built" vessels) necessary to move all general cargo moving over their respective berth services. In this way it is felt that the Government would have been taking care of the overall problem occasioned by post war emergency, in the most economical and feasible way open to it. This is especially true, in view of the fact that the greater percentage of the available cargo now moving under charter party agreement is of a relief nature.

Under the terms of our fiscal 1947 Appropriation Act, for the first six months of the current fiscal year, only $401,000,000. of the voyage revenues can be disbursed for operating expenses under the general agency agreements. As the change from agency to charter operations takes place, it necessitates inventories and surveys. Likewise, if the change is from charter to agency operation, inventories and surveys are required. While the interested Divisions inform us that they handle about two hundred ships per month with their present personnel, the matter of inventories and surveys would be a real handicap in a speedy and complete change from one type of operation to the other. All of these facts, in the opinion of this Committee, make it necessary for the Commission to continue with interim chartering.

Financial Requirements

The Commission already has approved financial requirements of charterers with respect to long-term charters. The Director of Finance, Operations, has recommended some relaxation of these requirements as covered by Exhibit "B" attached and a majority of this Committee concurs in his recommendation. The Director of Finance, Operations, estimates that approximately 70 vessels now under War Shipping Administration charter will be returned to the Government when the charterers are called upon to meet these proposed financial requirements. It is believed that such vessels as are surrendered by charterers as a result of the Commission invoking financial requirements, as amended, not heretofore in effect will be absorbed by one or more of the following: (a) other Charterers with the necessary financial requirements, (b) berth operators handling bulk cargoes within their respective areas and (c) General Agents, if necessary, within the limits of our appropriation.

Present Cargo Fleet

As of July 31, 1946 there were the following American flag ocean-going vessels being operated in the domestic and foreign services.

Privately owned vessels	349
Government owned, Bareboat Charter	585
" " , General Agency	1447
Total	2381

Rates

The Committee is informed that there are certain types of "war-built" vessels available for charter that will not warrant a higher basic rate than 15% of the sales price. We also are informed that equitable basic rates in the various foreign trades will differ materially. Generally, the

basic charter rate of 15% of the sales price is below the world market charter rate and, therefore, is not consistent with the policies of the Merchant Ship Sales Act 1946. However, except for one of our Committee members, it, in our opinion, would not be practicable at this stage of interim chartering to increase basic rates to what would appear to be the world market rates. As interim chartering has arisen from an emergency condition, we believe that the most practical way, under the circumstance, to achieve our major objective (more equitable charter hire and to reduce excessive charter profits to the charterer) would be to increase the present 50-50 division of the profits over 10% per annum of the Capital necessarily employed in the business, which increase we shall cover more fully in our recommendation.

All of the Committee members, except one, agree that the additional charter hire of 50% of the profits in excess of 10% of Capital necessarily employed in the business should be increased. A minority of the Committee, however, feel that the revised percentage being recommended is too high.

It is the opinion of the majority, that such vessels, now under charter, as are surrendered by reason of increased charter hire will be absorbed by increased sales and/or through the methods outlined under "Financial Requirements." It should be stressed at this juncture that, in our opinion, less attractive charters will increase our overall sales substantially, perhaps sufficient in number to equal or exceed the total of all vessels, now under charter, as hereafter may be surrendered because of increased charter hire.

Cattle Cargoes

We are informed that there are approximately 80 vessels chartered for the transportation of UNRA cattle cargoes, which are vessels not included in figures included above under the caption "Present Fleet". We also are informed

that the same charter rates are in force under these charters as are in effect with all other interim charters, but that UNRA has an agreement with the charterer pursuant to which it receives a percentage of the Charterer's profit remaining after payment of all charter hire due War Shipping Administration. This class of charters, therefore, constitutes a problem, that, in our opinion, should be dealt with separately as soon as the major problem has been disposed of.

RECOMMENDATION:

It is recommended that the Commission:

1. (a) Direct that on and after September 1, 1946, all vessels delivered or redelivered under charter shall be under the Merchant Ship Sales Act of 1946 fleet charter, hereinafter referred to;

(b) All vessels now under charter with voyages terminating on and after August 25, 1946 shall be placed under the aforementioned fleet charter if continued in operation by the then charterer.

(c) Applications for fleet charters shall be filed pursuant to General Order No. 60, as amended.

(d) Until the merger of War Shipping Administration and the Maritime Commission September 1, 1946 applications for charter agreements shall be filed with the Operating Contracts Division, of the War Shipping Administration, which is authorized to process the applications pursuant to General Order No. 60.

2. Adopt Supplement No. 1 to Administrative Order 101 form (*Exhibit "A"*) attached hereto to permit expeditious handling of spot short-term chartering under the Merchant Ship Sales Act of 1946.

3. The period during which interim charters may be made under fleet charter party shall not extend beyond

..... Each fleet charter shall be for a period of six months and the period for which individual charters may be made pursuant to the fleet charter shall not be for a period in excess of approximately six months.

4. The basic charter rate shall be 15% per annum of the Statutory Sales Price, unadjusted, or the floor price, whichever is the higher, and the additional charter hire shall be 90% of the profit on all voyages during the interim charter period, in excess of 10% per annum of capital necessarily employed in the business, as determined by the Commission.

5. Approve the financial requirements of charterers with respect to interim charters as embodied in (*Exhibit "B"*) attached.

6. There shall be no sub-time chartering of vessels bareboat chartered to the Commission without the prior approval of the Commission, which approval, if granted, will be only under exceptional circumstances for a single round voyage basis at current market time charter rates for American vessels as determined by the Commission.

7. Direct that a wire, as per (*Exhibit "C"*) attached, be sent to each charterer immediately.

8. The present charter policy of the War Shipping Administration be modified to the extent that the Commission will charter to berth operators vessels for moving emergency bulk cargoes within their respective areas, if necessary, in order to meet any disability of Charterers arising from changes in our chartering policy.

9. That this Committee be required to submit a supplemental recommendation as soon as possible with respect to cattle cargoes referred to in the body of this memorandum.

10. There shall be included in each fleet charter a 15 day cancellation clause with respect to each fleet charter.

11. Direct the General Counsel, after clearance with the Director of Finance, Operations, and the Director, Operating Contracts Division, to submit to the Commission for approval a proforma fleet charter as referred to in No. "1" above.

12. Direct that a press release, after clearance with interested Divisions, outlining concisely the Commission's policy with respect to interim chartering on and after September 1, 1946 be issued immediately on adoption.

Attachments:

/s/ R. S. McKeough	.....
Raymond S. McKeough	F. M. Darr
/s/ J. J. Quinn	.....
J. M. Quinn	Dudley Donald
/s/ Wade S. Skinner	.....
Wade Skinner	Paul Sullivan
/s/ C. H. McDaniel	Has concurred in minority
C. H. McDaniel	report of Mr. Dudley Donald
	C. G. Cornwell

EXHIBIT A

UNITED STATES MARITIME COMMISSION Washington	WAR SHIPPING ADMINISTRATION Washington
ADMINISTRATIVE ORDER 101 Supplement No. 1	ADMINISTRATIVE ORDER 87 Supplement No. 1

Subject: Administration of Merchant Ship Sales Act of 1946 (Fleet Chartering)

All of the provisions of United States Maritime Commission Administrative Order 101 and War Shipping Administration Administrative Order 87, and all supplements with respect to both or either of these orders, in respect to the responsibility of the various divisions of the Maritime Commission in the administration of the Merchant Ship Sales Act of 1946 in accordance with the Commission's General Order 60 (11 F.R. 4459) shall be applicable to all applications to fleet charter, except to the extent the provisions of this supplement are inconsistent therewith in which case the provisions of the suplement shall be controlling. These applications for fleet charters will be filed in accordance with Sections 299.31 and 299.81 of General Order 60.

The Division of Operations and Traffic is authorized and directed:

(A) To receive and process all applications received in connection with the fleet chartering of vessels under the provisions of Section 299.31 and Section 299.81 of the Commission's General Order 60:

(B) To prepare and transmit to the Commission reports and recommendations with respect to the determinations to be made and the action to be taken by the Commisison in connection with such applications, provided, that in all cases, the Division of Operations and Traffic shall obtain the comments of the Legal Division, the Division of Finance for Operations and the Division of Large Vessel Sales. Wherever the applicant is a subsidized operator, the comments of the Division of Government Aids also shall be obtained.

(C) To assign or allocate individual vessels which upon being so allocated shall be delivered in accordance with paragraph 4(a)(3), (4) and (6) of Administrative Order 101 to approved fleet charterers without prior approval of the Commission to the extent which prequalification has

been established provided (1) such assignments or allocation will not cause the total number of vessels under such fleet charter to exceed the maximum number authorized by the Commission, (2) the sale or long term charter of such vessels has not been authorized by the Commission and there is no bona fide application by a Citizen of the United States pending in said Division for the sale or long term charter of said vessel, the consummation of which would, in the opinion of the Director of said Division, be adversely affected by the assignment or allocation of the vessel under a fleet charter, and (3) such vessel either is in class and good operating condition or does not require, in the opinion of the Director, Division of Maintenance and Repair, the expenditure for the purpose of putting it in class and good operating condition of more than $50,000.

No assignment or allocation shall be made to an operator holding an operating-differential subsidy agreement with the Commission without the prior concurrence of the Director, Division of Government Aids, and the General Counsel.

EXHIBIT B

Insofar as relaxation of the minimum financial requirements prescribed in General Order No. 60, Supplement No. 2 are concerned, the Director of Finance for Operations has indicated that, in the application of these requirements to the proposed "fleet charter" program, he is prepared (pursuant to paragraph (c) of Section 299.9 *Exceptions and Exemptions to Rules and Regulations* of General Order No. 60, Supplement No. 2) to recommend the following:

1. Upon the premise that vessels allocated under fleet charters will not be so allocated for a period in excess of six months;

   (a) the working capital requirements prescribed in paragraph (a)(2)(i) of Section 299.31 may be reduced so as to include prepaid insurance for a

period of six months rather than for a period of one year,

(b) the net worth requirements prescribed in paragraph (a)(2)(ii) of Section 299.31 may be reduced so as to include basic charter hire for a period of six months rather than for a period of one year, and

2. That the minimum financial requirements as modified in paragraph numbered "1" above be further reduced by the application of the following "quantity reduction percentages" in instances where the charterers thereby would be eligible for the allocation of more than five vessels:

First five vessels	—	no reduction
Six to ten vessels, inclusive	—	reduce requirements 25%
Eleven to fifteen vessels, inclusive	—	reduce requirements 50%
All over fifteen vessels	—	reduce requirements 75%

EXHIBIT C

JOINT TELEGRAM OF CHAIRMAN, MARITIME COMMISSION AND ADMINISTRATOR, WAR SHIPPING ADMINISTRATION TO COMPANIES HAVING BAREBOAT CHARTERS

ALL WAR-BUILT VESSELS HEREAFTER CHARTERED FOR DELIVERY ON AND AFTER SEPTEMBER 1, 1946 WILL BE CHARTERED BY THE MARITIME COMMISSION PURSUANT TO THE PROVISIONS OF THE MERCHANT SHIP SALES ACT OF 1946. THE FORM OF CHARTER TO BE MADE EXCEPT FOR LONG TERM CHARTERS WILL BE SUBSTANTIALLY THE W.S.A. WARSHIPDEMISEOUT 203 FORM ADAPTED TO CONFORM TO THE REQUIREMENTS OF THE MERCHANT SHIP SALES ACT OF 1946 WITH THE FOLLOWING SPECIFIC MODIFICATIONS:

1. THE PERIOD OF THE CHARTER SHALL BE ABOUT SIX MONTHS WITH PROVISIONS FOR FIFTEEN DAY CANCELLATION BY EITHER PARTY.

2. THE RATE OF BASIC HIRE WILL BE AT RATE OF FIFTEEN PERCENT PER ANNUM OF EITHER THE UNADJUSTED STATUTORY SALES PRICE OR THE FLOOR PRICE OF THE VESSEL, WHICHEVER IS HIGHER.

3. THE ADDITIONAL CHARTER HIRE PAYABLE TO THE OWNER WILL BE NINETY PERCENT OF THE NET VOYAGE PROFIT IN EXCESS OF THE TEN PERCENT PER ANNUM ON CHARTERER'S CAPITAL NECESSARILY EMPLOYED INSTEAD OF FIFTY PERCENT AS HERETOFORE.

4. THE MINIMUM FINANCIAL REQUIREMENTS PRESCRIBED IN GENERAL ORDER NO. 60, SUPPLEMENT 2 HAVE BEEN MODIFIED AS FOLLOWS:

(a) WORKING CAPITAL REQUIREMENTS WILL BE REDUCED SO AS TO INCLUDE PREPAID INSURANCE ONLY FOR A PERIOD OF SIX MONTHS.

(b) NET WORTH REQUIREMENTS WILL BE REDUCED SO AS TO INCLUDE BASIC CHARTER HIRE ONLY FOR A PERIOD OF SIX MONTHS.

(c) AS SO MODIFIED, MINIMUM FINANCIAL REQUIREMENTS FOR IN EXCESS OF FIVE VESSELS WILL BE FURTHER REDUCED AS FOLLOWS:

SIX TO TEN VESSELS, INCLUSIVE	25 PER CENT
ELEVEN TO FIFTEEN VESSELS, INCLUSIVE	50 PER CENT
ALL OVER FIFTEEN VESSELS	75 PER CENT

ALL DELIVERIES UNDER BAREBOAT CHARTER DURING THE MONTH OF AUGUST WILL BE ON THE REGULAR W.S.A. WARSHIP-DEMISEOUT 203 FORM OF CHARTER WITH THE PRESENT CHARTER RATE.

WITH RESPECT TO VESSELS NOW UNDER W.S.A. INTERIM BAREBOAT CHARTERS WHOSE VOYAGES TERMINATE ON OR AFTER AUGUST 25 THIS TELEGRAM SHALL BE DEEMED TO BE THE OWNER'S FIFTEEN DAYS' NOTICE OF CANCELLATION PURSUANT TO CLAUSE FOURTEEN OF THE INTERIM BAREBOAT CHARTER. ACTUAL REDELIVERY WILL NOT BE TAKEN OF SUCH VESSELS, HOWEVER, IF THE CHARTERER DESIRES TO CONTINUE SUCH VESSELS UNDER THE MARITIME COMMISSION FORM OF CHARTER ABOVE OUTLINED.

TELEGRAPHIC OR WRITTEN ACCEPTANCE ADDRESSED TO SECRETARY, MARITIME COMMISSION, OF THE CONDITIONS OF THE MARITIME COMMISSION FORM OF CHARTER AS ABOVE OUTLINED MUST BE RECEIVED WITHIN FIVE DAYS FROM DATE.

WITH RESPECT TO VESSELS NOW UNDER W.S.A. INTERIM BAREBOAT CHARTERS WHOSE VOYAGES TERMINE PRIOR TO AUGUST 25, THE GOVERNMENT WILL ACCEPT REDELIVERY AT THE TERMINATION OF THE VOYAGE AND WILL WAIVE THE FIFTEEN DAYS' NOTICE OF CANCELLATION REQUIRED BY THE CHARTER IN ANY SUCH CASE. IF THE CHARTERER WISHES TO CONTINUE UNDER SUCH CHARTER FOR ANOTHER VOYAGE, THEN THIS TELE-

GRAM SHALL BE DEEMED TO BE THE OWNER'S FIFTEEN DAYS' NOTICE OF CANCELLATION PURSUANT TO CLAUSE FOURTEEN OF THE CHARTER AND REDELIVERY WILL BE TAKEN PURSUANT TO THE CHARTER PROVISIONS ON THE NEXT VOYAGE TERMINATION.

EXCEPTED FROM THE FOREGOING ARE COMMITMENTS OR CHARTERS WITH RESPECT TO ANIMAL CARRYING VESSELS WHICH WILL BE THE SUBJECT OF SPECIAL ARRANGEMENTS.

[Minutes of Maritime Commission for August 9, 1946 Concerning Charter Hire—Pages Nos. 37218-37222]

Commissioner McKeough spoke first in a preliminary statement in support of the majority report of the Committee.

Chairman Smith expressed himself as not favoring the proposal of the majority report in view of the risks which the charterer must assume.

Commissioner Mellen then spoke briefly with reference to the financial phases of the three reports, requesting an explanation of the meaning of the term "capital necessarily employed". He asked for specific examples of the result of the financial requirements as proposed by Mr. Quinn, based on a Liberty LC2 type vessel.

At this point Chairman Smith withdrew from the meeting at 11:00 A.M., whereupon Vice Chairman Carmody assumed the chair.

In answer to Commissioner Mellen's request, Mr. Quinn explained that the "capital necessarily employed" for earning purposes would be deemed to be not in excess of an amount equal to the basic charter hire. Elaborating on this statement, Mr. Quinn explained that on a Liberty type vessel the basic charter hire would be approximately $8,000.00 per month—$48,000.00 for six months—$96,000.00 per annum—and that 10% thereof would be $800.00 per month. To the extent earned, profits up to an amount equal to 10% of the basic charter hire would be retained by the Charterer before the division of profits in excess of 10% per annum of "capital employed". On an annual basis this

would amount to $9,600.00 in the foregoing example. If, however, the net worth requirements are reduced 50% under the proposed "fleet charters" to be for a period of about six month, the profits to be retained by the charterer (before division of profits in excess of 10% per annum of "capital employed") would be at the rate of 10% per annum on such *reduced* net worth requirements. In the foregoing example this would amount to $2,400.00, i.e., 5% (for six months) of $48,000.00, or $400.00 per month.

Commissioner Mellen then requested a definition of the meaning of "net worth" and several explanations were given by Messrs. Quinn and McDaniel as follows:

Net worth is

(1) capital plus surplus
or
(2) total assets over total liabilities
or
(3) paid in capital plus surplus
or
(4) net investment of stockholders

In further explanation of the proposal of the above-quoted majority report of the Committee, Commissioner McKeough discussed the report at great length, pointing out that what the Committee was endeavoring to do was to try to correct a situation where charterers with a low capital investment would earn exceptionally high profits.

Mr. Donald in explanation of his above-quoted report pointed out that a vessel under General Agency Agreement would earn $1925.00 on a 45 day voyage whether the vessel makes or loses money. All losses are assumed by the War Shipping Administration. He compared this figure with the amount which a charterer could earn with a similar vessel under the charter rate recommended by him.

Mr. Darr stated that with sales of ships being made to foreigners at a rapid rate the world market would be nec-

essarily affected by low charter rates which foreign competitors have indicated will be placed in effect.

[Minutes, page 37219]

Then followed a general discusison of the tabulation appearing on Page 5 of the foregoing memorandum from Dudley B. Donald, Acting Chief, Chartering Section, and it was pointed out that the figures shown under the heading "Division under fixed 90% plan, charterer" should be increased by $800 to reflect 10% profit of the charterer based on capital necessarily employed.

Commissioner Parkhurst suggested that by reference to the report of Mr. Cornwell of July 29, 1946, which is spread in the minutes of the special meeting of July 31; 1946, a compromise might be reached between the 66⅔% recapture referred to in that report and the above-quoted majority and minority reports. A general discussion on this point followed.

Chairman Smith re-entered the meeting at 12:10 P.M., and assumed the chair.

Commissioner McKeough then referred to a specific example of an operator of a liner service which had earned approximately $753,000 for a 60 day period with a fleet of 21 ships under a War Shipping Administration interim charter, and earned approximately $338,000 over and above 10% of the capital necessarily employed.

At this point Chairman Smith withdrew from the meeting at 12:25 P.M., and Vice Chairman Carmody assumed the chair.

The Commission, by the unanimous "yea" vote of the members present recessed at 12:30 P.M., until 2:30 P.M.

The Commission reconvened at 2:30 P.M.

Present Chairman Smith and Commissioners Carmody, McKeough, Mellen and Parkhurst.

Also Present: S. D. Schell, Executive Director; Wade H. Skinner, General Counsel; G. H. Halmbold, Director, Division of Operations and Traffic; Dudley B. Donald, Acting Chief, Chartering Section, Division of Operations and Traffic; F. M. Darr, Director, Division of Traffic, War Shipping Administration; Huntington T. Morse, Assistant to Chairman; P. A. Sullivan, Director, Division of Operating Contracts, War Shipping Administration; Charles D. Marshall, Assistant to Commissioner Parkhurst; Joseph Friedlander, Chartering Section, Division of Operations and Traffic; C. H. McDaniel, Director, Division of Government Aids; J. M. Quinn, Director of Finance for Operations; Kurt Nathan, Assistant to Commissioner Carmody; Stephen C. Manning, Jr., Acting Director, Division of Information; C. G. Cornwell, Director, Division of Large Vessel Sales; Julius J. Rosenberg, Executive Assistant to Administrator Conway, War Shipping Administration; and A. J. Williams, Secretary.

[Minutes, page 37220]

Memorandum of Appreciation to Admiral E. J. Moran, Assistant Deputy Administrator for Charters and Valuations, War Shipping Administration

There was presented the following proposed memorandum from Chairman Smith to Admiral E. J. Moran, Assistant Deputy Administrator for Charters and Valuations, War Shipping Administration:

"The Commission appreciates that you wish to return to your private business, and is greatly indebted to you for the services you have performed for the Commission while you have served as Assistant Deputy Administrator for Charters and Valuations of the War Shipping Administration. As you are aware, the functions of the War Shipping Administration will be transferred to the Commission as of September 1.

If agreeable to you, the Commission would like to feel that we could call upon you as the occasion may warrant for consultation in regard to matters which you have been handling and with which you are thoroughly familiar concerning which questions may arise in the future.

W. W. SMITH
Chairman"

After discusison, by the unanimous "yea" vote of the members of the Commission, the foregoing memorandum was approved and the Chairman was authorized to sign and send it to Admiral Moran.

Chartering Under Merchant Ship Sales Act of 1946—Supplement No. 1 to Administrative Order 101

The Commission again considered the matter of "Chartering under Merchant Ship Sales Act of 1946—Supplement No. 1 to Administrative Order 101", which was considered at the morning session of this meeting.

Mr. Darr informed the Commission that he had given considerable thought to the majority and minority reports quoted above, and felt that the differences could possibly be reconciled by modifying the minority reports of Mr. Donald by changing the additional charter hire to be (a) one-half of the average net voyage profit up to the first $150 per day ($75 each for Government and charterer, if earned) for the period under charter in excess of the 10% of the charterer's capital necessarily employed in the business, and (b) 75% of the next $150 per day of net voyage profits, and (c) 90% of the excess over such $300 average net voyage profit per day. Mr. Darr stated that this compromise was agreeable with Messrs. Sullivan, Donald, Cornwell and himself.

The Commission then proceeded to analyze the possible results of the formula suggested by Mr. Darr based on a 60 day voyage with a $20,000 profit. Commissioner McKeough on behalf of the majority group then made the following offer for additional charter hire:

> One-half of the average net voyage profit up to the first $150 per day ($75 each for Government and charterer, if earned) for the period under charter in excess of the 10% of the charterer's capital necessarily employed in the business, and 90% of the excess over such $150 average net voyage profit per day.

A general discussion followed with respect to Commissioner McKeough's formula which was analyzed in great detail.

[Minutes, page 37221]

Commissioner Mellen then suggested the following formula with respect to additional charter hire:

(a) One-half of the average net voyage profit up to the first $100 per day in excess of 10% of the charterer's capital necessarily employed in the business, and

(b) 75% of the next $200 per day, and

(c) 90% of all voyage profits in excess of $300 per day.

Then followed a lengthy discussion with respect to the formula of Commissioner Mellen which was analyzed and compared with the formulas submitted by all parties.

A calculation of the results of each formula was made on the basis of a 60 day voyage resulting in a $20,000 profit, if earned, and the results were discussed at great length.

After further discussion, by unanimous "yea" vote, the Commission took the following action:

Approved the recommendations contained in the foregoing memorandum from the Special Charter Committee dated August 8, 1946 (majority group) with (a) substitution of the words "Division of Operations and Traffic, United States Maritime Commission" in place of "Operating Contracts Division of the War Shipping Administration" in Paragraph 1 (d); (b) elimination of the word "interim" and the addition of the date "August 31, 1946," in Paragraph 3; (c) substitution of the following in place of Paragraph 4:

"4. Initial basic charter hire shall be at the rate of 15% per annum on the unadjusted statutory sales price, or the floor price on each vessel type, whichever is the higher. Additional charter hire to be (a) one-half of the average net voyage profit up to the first $100 per day in excess of 10% of the charterer's capital necessarily employed in the business, and (b) 75% of the next $200 per day, and (c) 90% of all voyage profits in excess of $300 per day."

Approved, subject to approval by the Administrator, War Shipping Administration, adoption of Supplement No. 1 to United States Maritime Commission Administrative Order 101,—War Shipping Administration Administrative Order 87, Supplement 1, as above set forth.

Approved the following revised telegram to companies having bareboat charters with the War Shipping Administration:

"ALL WAR-BUILT VESSELS HEREAFTER CHARTERED AND DELIVERED ON AND AFTER AUGUST 31, 1946 WILL BE CHARTERED BY THE MARITIME COMMISSION PURSUANT TO THE PROVISIONS OF THE MERCHANT SHIP SALES ACT OF 1946. THE FORM OF FLEET CHARTER TO BE MADE EXCEPT FOR LONG TERM CHARTERS WILL BE SUBSTANTIALLY THE W.S.A. WARSHIPDEMISEOUT 203 FORM ADAPTED TO CONFORM TO THE REQUIREMENTS OF THE MERCHANT SHIP SALES ACT OF 1946 WITH THE FOLLOWING SPECIFIC MODIFICATIONS:

1. THE PERIOD OF THE CHARTER SHALL BE ABOUT SIX MONTHS WITH PROVISIONS FOR FIFTEEN DAY CANCELLATION BY EITHER PARTY.

2. THE RATE OF BASIC HIRE WILL BE AT RATE OF FIFTEEN PER CENT PER ANNUM OF EITHER THE UNADJUSTED STATUTORY SALES PRICE OR THE FLOOR PRICE OF THE VESSEL, WHICHEVER IS HIGHER.

3. THE ADDITIONAL CHARTER HIRE PAYABLE UNDER AND DURING THE PERIOD OF THE FLEET CHARTER SHALL BE (a) 50 PER CENT OF THE AVERAGE NET VOYAGE PROFIT UP TO THE FIRST $100 PER DAY IN EXCESS OF

[Minutes, page 37222]

10 PER CENT OF CHARTERER'S CAPITAL NECESSARILY EMPLOYED IN THE BUSINESS, AND (b) 75 PER CENT OF THE NEXT $200 PER DAY, AND (c) 90 PER CENT OF ALL NET VOYAGE PROFITS IN EXCESS OF $300 PER DAY.

4. THE MINIMUM FINANCIAL REQUIREMENTS PRESCRIBED IN GENERAL ORDER NO. 60, SUPPLEMENT #2 HAVE BEEN MODIFIED AS FOLLOWS:

(a) WORKING CAPITAL REQUIREMENTS WILL BE REDUCED SO AS TO INCLUDE PREPAID INSURANCE ONLY FOR A PERIOD OF SIX MONTHS.

(b) NET WORTH REQUIREMENTS WILL BE REDUCED SO AS TO INCLUDE BASIC CHARTER HIRE ONLY FOR A PERIOD OF SIX MONTHS.

(c) AS SO MODIFIED, MINIMUM FINANCIAL REQUIREMENTS FOR IN EXCESS OF FIVE VESSELS WILL BE FURTHER REDUCED AS FOLLOWS:

SIXTH TO TENTH VESSEL, INCLUSIVE, 25 PERCENT
ELEVENTH TO FIFTEEN VESSEL, INCLUSIVE, 50 PERCENT
ALL OVER FIFTEEN VESSELS, 75 PERCENT

"ALL DELIVERIES UNDER BAREBOAT CHARTER DURING THE MONTH OF AUGUST WILL BE ON THE REGULAR W.S.A. WARSHIPDEMISEOUT 203 FORM OF CHARTER WITH THE PRESENT CHARTER RATE.

"WITH RESPECT TO VESSELS NOW UNDER W.S.A. INTERIM BAREBOAT CHARTERS WHOSE VOYAGES TERMINATE ON OR AFTER AUGUST 31, THIS TELEGRAM SHALL BE DEEMED TO BE THE OWNER'S FIFTEEN DAYS' NOTICE OF CANCELLATION PURSUANT TO CLAUSE FOURTEEN OF THE INTERIM BAREBOAT CHARTER. WITH RESPECT TO VESSELS NOW UNDER W.S.A. INTERIM BAREBOAT CHARTERS WHOSE VOYAGES TERMINATE PRIOR TO AUGUST 31, THIS TELEGRAM SHALL

ALSO BE DEEMED TO BE THE OWNER'S FIFTEEN DAYS' NOTICE OF CANCELLATION PURSUANT TO CLAUSE FOURTEEN OF THE CHARTER AND REDELIVERY WILL BE TAKEN PURSUANT TO THE CHARTER PROVISIONS ON THE NEXT VOYAGE TERMINATION. ACTUAL REDELIVERY WILL NOT BE TAKEN OF SUCH VESSELS, AND INVENTORY AND SURVEY UNNECESSARY IF THE CHARTERER DESIRES TO CONTINUE SUCH VESSELS UNDER THE MARITIME COMMISSION FORM OF CHARTER ABOVE OUTLINED.

"TELEGRAPHIC OR WRITTEN ACCEPTANCE ADDRESSED TO SECRETARY, MARITIME COMMISSION, OF THE CONDITIONS OF THE MARITIME COMMISSION FORM OF CHARTER AS ABOVE OUTLINED MUST BE RECEIVED WITHIN FIVE DAYS FROM DATE.

"EXCEPTED FROM THE FOREGOING ARE COMMITMENTS OR CHARTERS WITH RESPECT TO ANIMAL CARRYING VESSELS WHICH WILL BE THE SUBJECT OF SPECIAL ARRANGEMENTS.

W.W. SMITH
CHAIRMAN
U. S. MARITIME COMMISSION
GRANVILLE CONWAY
ADMINISTRATOR
WAR SHIPPING ADMINISTRATION"

The proper officers of the Commission were authorized and directed to take any and all actions necessary and proper to carry the action of the Commission as above set forth fully into effect.

Volume II. Exhibit E-12

[Releases and Regulations of War Shipping Administration and Maritime Commission Relating to Bareboat Charters]

[Policy Statement of March 6, 1946 Governing Interim Chartering]

Horton — Maritime 60 PR-2594(W)

WAR SHIPPING ADMINISTRATION
Washington, D. C.

For Release after 3 P.M.
Wednesday, March 6, 1946

The following statement on interim chartering of U. S. Merchant ships was issued today by the War Shipping Administration:

POLICY GOVERNING INTERIM CHARTERING OF SHIPS BY WAR SHIPPING ADMINISTRATION

I. General statement of purpose and intention.

With the termination of the UMA agreement on March 2, 1946, the WSA proposes to derequisition vessels chartered to the WSA as rapidly as possible so as to achieve prompt resumption of private shipping by operators owning their own vessels. It is obvious that the tonnage requirement necessary for transportation of foreign commerce of the United States will far exceed the privately owned tonnage to be derequisitioned. The UNRRA requirements and national import programs will create an emergent demand for tonnage during at least the calendar year 1946 and well into 1947. During this period it is felt necessary to curtail WSA operation through agents to the greatest extent possible, in order that dual operation (government and private) with its attendant disadvantages may be avoided.

The Policy of the Ship Sales Bill is to encourage the ownership and operation of the Merchant fleet of the United States by citizens thereof and the retirement of the

Government from Ship operation through the sale or charter of war-built tonnage. The pending bill provides that no charters shall be made under the Act until sixty days after the publication by the Maritime Commission of the statutory sales prices. However, as the Report of the Joint Conferees states: "The bill would not affect the existing authority of the War Shipping Administration and the Maritime Commission to charter vessels to citizens of the United States, which may be necessary for limited periods to speed up the resumption of private steamship operation." It is proposed, therefore, that with the termination of UMA, WSA will undertake a program of interim bareboat chartering under the authority of P.L. 101, 77th Congress, authorizing the charter of vessels "necessary for transportation of foreign commerce of the United States or of commodities essential to the national defense, upon such terms and conditions, for such period or periods, and subject to such restrictions as the Commission (now WSA) may deem necessary or desirable for the protection of the public interest, and at such rate of hire as it may deem to be fair and reasonable." It is intended that this program shall remain in effect only for such period as may be required for the chartering provisions of the Ship Sales to become fully operative. The provisions of the interim charters therefore will be patterned generally after the provisions of the Ship Sales Bill.

Following the termination of the UMA agreement on March 2, 1946, the War Shipping Administration will undertake to assure that adequate U. S. flag tonnage is available to transport this nation's fair share of its foreign commerce. It will also contribute tonnage to a pool to be formed for the common task of relief and rehabilitation including the shipping requirements of UNRRA for cargo moving from the United States and Canada. These requirements will be centrally programmed in Washington and so far as possible cargo to move on United States

flag ships will be allocated to privately owned or chartered shipping. Any deficiencies resulting will be met by government owned tonnage.

The WSA does not expect to exercise any direct control over privately owned tonnage except to see that it is employed in a manner not inconsistent with the overall programs and the welfare of the American Merchant Marine in general. The cost of moving cargoes for relief and rehabilitation will however continue to be of direct concern to this Government and freight rates for such cargoes therefore must conform with Conference or WSA approved rates. At the same time WSA recognizes fully that participation by private capital is dependent upon adequate and compensatory rates.

The WSA hopes that a large share of this Government's obligation for the transportation of relief and rehabilitation cargoes will be met by privately owned or chartered tonnage.

II. Basic policy regarding chartering.

Charters will be made to:

(a) Operators of liner or berth services who will be expected to bring their fleets up to the standards required for peacetime operation pending acquisition of new tonnage and/or redelivery of their owned vessels.

(b) Liner or berth operators to provide additional tonnage necessitated as a result of the war or in the relief and rehabilitation program, to handle the additional cargo moving on berth vessels.

(c) Experienced operators other than those engaged in berth services for the transportation of commodities which move under contract and in full-cargo lots.

(d) Other operators who qualify and commit themselves to purchase ships under the Merchant Ship Sales Act of 1946.

(c) Operators for employment in cross trades (that is between foreign port) where such operation is in the interest of the over-all government program and does not conflict with a United States flag berth service.

III. Form of Charter.

A draft of proposed "WARSHIPDEMISEOUT" as an interim charter, the provisions of which are patterned generally after those of the Ship Sales Act, has already been released. Comment on the provisions of this charter is unnecessary for the purpose of this statement, except to state that the trading limits will be in conformity with the basic policy set out in paragraph "II" herein and that WSA must exercise reasonable control over the routing and cargo carried by the ships it charters.

The following table sets forth proposed basic charter rates for standard vessels based on the pending Ship Sales Bill.

Type Vessel	Deadweight Tonnage	Estimated Statutory Sales Price (Mean)	Charter Rate Per Annum 15% of Sales Price*	Charter Rate Per Month*
EC2-S-C1	10,800	$ 582,833.00 Ceiling	87,424.95	7,285.41
C1-M-AV1	5,100	640,000.00	96,000.00	8,000.00
C1-C1A	7,400	932,757.50	139,913.63	11,659.47
C1-C1B	9,100	932,757.50	139,913.63	11,659.47
C2-C2-S-B1	9,200	991,347.00	148,702.05	12,391.84
C2-C2-S-AJ1	10,800	991,347.00	148,702.05	12,391.84
C3	12,300	1,154,000.00	173,100.00	14,425.00
VC2-S-AP2	10,800	917,979.50	137,696.93	11,474.00
VC2-S-AP3	10,800	1,026,347.00	153,952.05	12,829.34

* With additional charter hire payable in accordance with the provisions of Sec. 709, Merchant Marine Act, 1936.

IV. General

In the allocation of cargo to be carried by U. S. flag vessels, first preference will be given by WSA to the owners and second preference to charterers of U. S. flag vessels.

Except in very unusual cases, no charters will be made under the authority of P.L. 101 (77th Congress) after the effective date for chartering under the Ship Sales Act. Furthermore, it is intended that these interim charters shall be supplanted by Ship Sales Act charters at the earliest practicable date.

In order to receive consideration, any comments with respect to the above must be received not later than March 15, 1946.

[Bareboat Charter Regulation No. 1—July 2, 1946]

Kendrick — Maritime 796 PR 2802 (W)

WAR SHIPPING ADMINISTRATION
Washington

FOR RELEASE

Tuesday, July 2, 1946

The War Shipping Administration today released the following:

BAREBOAT CHARTER REGULATION No. 1

Notice to All Bareboat Charterers of WSA Vessels and All Claimants Requesting Assistance of WSA Owned Tonnage for Transportation of Grain and Coal Cargoes from United States to European, North African, Indian and Asiatic Destinations.

To insure continuous uninterrupted flow of Relief and Rehabilitation cargoes from the United States to devastated areas for which the WSA is responsible,

complete coordination of the maximum use of port facilities and necessary control over vessel berthings for shipments of coal and grain cargoes to all European, North African, Indian and Asiatic destinations must be maintained by WSA. To guarantee such coordinated control it is essential that all U. S. Government-owned ships, including those under bareboat charter to private operators, be allocated for such cargoes by the WSA.

Accordingly, effective immediately, any WSA vessel under bareboat charter and available for coal or grain cargoes to European, North African, Indian and Asiatic destinations must be nominated and offered to the Division of Allocations for voyage allocation to meet cargo requirements and berthing requirements. Such nominations should be made through Mr. P. F. Tunison, WSA New York, for vessels on the Atlantic Coast; through Mr. W. E. McCardell, WSA New Orleans, for vessels in the Gulf; and through Mr. R. Pries, WSA San Francisco, for vessels on the Pacific Coast.

After allocation of vessel by the Division of Allocations, charter shall be arranged between bareboat charterer and the cargo shipper or claimant on the following basis:

1. Rate of freight to be not higher than the current WSA rate and to be not lower than 10% less than the current WSA rate.

2. WSA voyage charter terms and conditions to apply.

3. Total brokerage commission to be not more than that allowed under WSA General Order No. 45 on bulk cargoes of coal and grain, namely, a sum not to exceed an amount equal to 1¼% of a freight revenue calculated at $4.00 per ton on the total number of cargo tons, or five cents per ton. No other commissions shall be payable by vessel.

Signed

GRANVILLE CONWAY
Administrator

[Bareboat Charter Regulation No. 2—July 10, 1946]

WAR SHIPPING ADMINISTRATION
Washington

BAREBOAT CHARTER REGULATION No. 2

TO: All Bareboat Charters of War Shipping Administration Vessels.

The standard clause for description of trading limits in bareboat charters covering those approved under Clause II-C of Interim Charter Policy, has been amended as follows:

> "World wide trading (a) in foreign trade from and to U. S. ports carrying such bulk cargoes or cargoes of one commodity as may be approved by the owner moving under contract in full cargo lots, with privilege of carrying on deck cargo of one commodity of type different from that carried under deck as may be approved by the owner; and/or (b) on intermediate voyages between foreign ports (i) in berth service provided such service does not compete with an established U. S. flag general cargo berth service as determined by the owner or (ii) carrying in full cargo lots such cargoes as may be approved by the owner, provided that, except with the prior approval of the owner, neither a direct round cargo voyage between foreign ports nor more than two cargo voyages between foreign ports may be made after sailing from a U. S. port."

By an addendum to be issued as soon as practicable, the above mentioned clause will be incorporated in bareboat charters already approved and executed.

Effective with voyages commencing on and after July 1, the carriage of cargoes on all vessels bareboat chartered from the War Shipping Administration are subject to the following provisions:

It is required that one copy of voyage charters, or other contracts of affreightment, executed covering the carriage of all bulk or full cargoes shall be submitted to the Director of Traffic.

With the exception of the rate levels established for coal and grain cargoes set forth in Bareboat Charter Regulation No. 1, all other cargoes are to be carried at the established Conference rates or at the War Shipping Administration approved rates.

Total brokerage commission to be not more than that allowed under General Order No. 45 and all supplements thereto, *on all cargoes*. No other commissions shall be payable by the vessel.

Bareboat charterers who redeliver vessels to the War Shipping Administration shall not be eligible for the charter of additional War Shipping Administration vessels for a period of sixty (60) days, with the exception that particular type vessels for operation in a regular berth service may be substituted for the vessel being redelivered.

We also wish to bring to your attention that the subtime charter of vessels bareboat chartered from the War Shipping Administration will be approved only under extenuating circumstances and at current time charter rates for American vessels as determined by the Director of Traffic. Attention of the Bareboat Charterers is also called to the provisions of Clause 22, Part II. In any case where the provisions of this Clause are applicable the Bareboat Charterers shall submit to the Director, Operating Contracts Division, full particulars thereof, including a certified copy of the time charter or other contract or agreement for approval of the terms thereof.

(Sgd.) GRANVILLE CONWAY
Granville Conway
Administrator

July 10, 1946

[Bareboat Charter Regulation No. 3—July 31, 1946]

WAR SHIPPING ADMINISTRATION
Washington

July 31, 1946

BAREBOAT CHARTER REGULATION No. 3

PERTAINING TO ALL WAR SHIPPING ADMINISTRATION VESSELS UNDER BAREBOAT CHARTER

A. Bareboat Charter Regulation No. 1 dated July 1, 1946 is hereby cancelled effective August 1; 1946.

B. However, on all bareboat chartered vessels fixed or which may be fixed to berth after July 31 to load grain or coal cargoes moving from the United States to European, North African, Indian and Asiatic destinations, WSA voyage charter terms and conditions shall continue to apply.

C. Bareboat Charter Regulation No. 2 dated July 10, 1946 is hereby amended to read as follows:

1. The standard clause for description of trading limits in bareboat charters covering those approved under Clause II-C of Interim Charter Policy, has been amended as follows:

"World wide trading (a) in foreign trade from and to U. S. ports carrying such bulk cargoes or cargoes of one commodity as may be approved by the owner moving under contract in full cargo lots, with privilege of carrying on deck cargo of one commodity of type different from that carried under deck as may be approved by the owner; and/or (b) on intermediate voyages between foreign ports (i) in berth service provided such service does not compete with an established U. S. flag general cargo berth service as determined by the owner of (ii) carrying in full cargo lots such cargoes as may be approved by the owner, provided that, except with the prior approval of the owner, neither a

direct round cargo voyage between foreign ports nor more than two cargo voyages between foreign ports may be made after sailing for a U. S. port."

2. By an addendum to be issued as soon as practicable, the foregoing clause will be incorporated in bareboat charters already approved and executed.

3. Effective with voyages commencing on and after July 1, the carriage of cargoes on all vessels bareboat chartered from the War Shipping Administration are subject to the following provisions:

(a) It is required that one certified copy of voyage charter, or other contracts of affreight, executed covering the carriage of all bulk or full cargoes shall be submitted to the Director of Traffic.

(b) With the exception of rate levels established for coal and grain cargoes under Bareboat Charter Regulation No. 1, which apply to July only, all cargoes are to be carried at the established conference rates or at rates approved by WSA, except full cargoes of grain (bulk or bagged), nitrates (bulk or bagged), sugar between foreign ports, coal, coke, sulphur, bauxite, phosphate rock and other full bulk cargoes not hand stowed and approved by the owners under Section G-1 of this Regulation.

4. Effective with all voyages contracted for and commencing between July 15 and July 31, 1946 both inclusive, total brokerage commission to be not more than that allowed under General Order No. 45 and all supplements thereto, on all cargoes. No other commissions shall be payable by the vessel.

5. Effective with all voyages contracted for berthing after July 31, 1946, the following brokerage commissions shall be allowed as expense under final accounting of voyage profits under terms of the bareboat charter:

(a) On all cargoes loaded for account of UNRRA total brokerage commissions shall be not more than 1¼% of the gross freight. Forwarding fees payable to freight forwarders, if any, shall be paid from such brokerage commissions. No other commissions shall be payable by the vessel.

(b) Total brokerage commissions on relief and rehabilitation cargoes, other than for account of UNRRA, moving on Government owned bareboat chartered vessels to devastated war areas shall not exceed reasonable rates that would normally be charged for the brokerage service rendered in respect to such cargoes; and no commissions other than brokerage commissions shall be payable by the vessel. If it is found that total brokerage commissions in any respect exceed reasonable rates, the War Shipping Administration will reserve the right to regulate and limit such brokerage commissions on Government owned bareboat chartered vessels.

6. Bareboat charterers who redeliver vessels to the War Shipping Administration shall not be eligible for the charter of additional War Shipping Administration vessels for a period of sixty (60) days after date of redelivery, except that more suitable type vessels owned or chartered by the charterer for operation in a regular berth service may be substituted for bareboat vessels being redelivered without affecting such eligibility.

7. Sub-time chartering of vessels bareboat chartered from the War Shipping Administration will be approved only under extenuating circumstances and at current market time charter rates for American vessels as determined by the Director of Traffic. Attention of the Bareboat Charterers is also called to the provisions of Clause 22, Part II. In any case where the provisions of this Clause are applicable the Bare-

boat Charterers shall submit to the Director, Operating Contracts Division, full particulars thereof, including a certified copy of the time charter or other contract or agreement for approval of the terms thereof.

(Sgd.) GRANVILLE CONWAY
Granvielle Conway [sic]
Administrator

[Traffic Regulation Prescribing Rates, etc., Applicable to Maritime Commission Controlled Vessels]

UNITED STATES MARITIME COMMISSION
WASHINGTON

January 24, 1947

TRAFFIC REGULATION No. 17
(War Shipping Administration Function Series)

PERTAINING TO
VESSELS OWNED BY OR UNDER CHARTER TO WAR SHIPPING ADMINISTRATION AND UNITED STATES MARITIME COMMISSION
(Dry Cargo Vessels, Troopships and Refrigerator Vessels)

To: All Agents, General Agents and Berth Agents

SUBJECT: Prescribing Per Diem Rates and Terms and Conditions Applicable to War Shipping Administration and United States Maritime Commission Controlled Vessels Made Available to War and Navy Departments on "Use of Vessel" Basis on and after July 1, 1946.

Pursuant to agreement with the War Department and Navy Department, the following per diem rates and attendant terms and conditions are hereby prescribed as applicable to War Shipping Administration and United States Maritime Commission controlled vessels made available to the War Department and Navy Department on a per diem "use of vessel" basis on which loading was or is commenced on and after July 1, 1946. The rates prescribed apply to both port and sea time.

Section I. Per Diem Rates

Dry Cargo Vessels	*Rates*	*Troopships*	*Rates*
EC2-S-C1 (Liberty)	$1,400	EC2-S-C1 (Liberty)	$1,545
VC2-S-AP2 (Victory)	1,845	VC2-S-AP2 (Victory)	2,190
VC2-S-AP3 (Victory)	1,980	VC2-S-AP3 (Victory)	2,265
C1-M-AV1	1,130	C1-A	1,835
C1-A (Turbine)	1,490	C1-B	1,880
C1-A (Diesel)	1,465	C2	2,055
C1-B (Turbine)	1,460	C3-S-A2	2,385
C1-B (Diesel)	1,495	C4-S-A3	
C2-S-AJ1	1,690	C4-S-B2	2,965
C2-S-B1	1,675		
C3-S-A2	1,965	*Refrigerator Vessel*	
C4-S4	2,235		
N3-S-A2	1,045	R2-S-B1	1,955

Section II. Items Included in Per Diem Rates

(1) Crew subsistence and wages, including overtime, area bonuses and Social Security taxes.

(2) Fuel, except as provided in Section III, paragraph 4, and water.

(3) Stores, supplies and equipment (not including purchase or rental of special equipment or facilities necessitated by unusual nature of the cargo to be handled.)

(4) Repairs and maintenance.

(5) Miscellaneous Vessel expense.

(6) Marine and War Risks Hull and Machinery and P. & I. Insurance.

(7) Port expenses, such as towage, pilotage, entrance and clearance dues and fees, handling lines, consular and customhouse dues and charges, health and sanitary fees, stamp and document charges; also wharfage, dockage, mooring and unmooring fees, anchorage dues, lighthouse dues, tonnage dues and taxes, harbor dues, port taxes, and similar charges, however called, normally borne by the vessel. The sum included in the per diem rates to cover these port expenses is contin-

gent upon Maritime Commission vessels continuing to receive without charge at Army or Navy shore installations the same services that were furnished free prior to July 1, 1946.

(8) Compensation paid to Agents of War Shipping Administration or United States Maritime Commission for husbanding the vessel and for acting as accounting line, including the supervision and handling of per diem accounts.

Section III. Items Not Included in Per Diem Rates

(1) Subsistence of troops or others carried for account of the War or Navy Departments. (*Note:* Separate instructions as to rates of subsistence will be issued.)

(2) Cargo and passenger taxes, dues and fees of every nature whether assessed directly against the cargo or passengers or against the vessel in relation to or based on the cargo or passengers transported, other than those covered by paragraph 7 of Section II, i.e., such items as are normally assessed against cargo or passengers.

(3) "Attack bonus" payable to crew.

(4) Adjustments in fuel costs for Troopships to compensate for effect of any increase resulting from fuel purchased outside the United States.

(5) Stevedoring, accessorial and other charges connected with the receiving, loading, trimming, discharge and delivery of cargo or the embarkation or debarkation of troops and passengers, including the cost of lighters, barges, heavy lift or other special equipment, dunnage or fittings required for cargo purposes and costs of cleaning holds and tanks after discharge of cargo.

(6) Canal Tolls and dues, transit charges, etc.

(7) Agency fees and commissions for services required in domestic or foreign ports in connection with the handling of cargo and troops and passengers.

Section IV. General Terms and Conditions—Dry Cargo and Refrigerator Vessels

(1) In general, any cargo vessel allocated to Army or Navy service will be considered as operating therein from noon of the date when the vessel is tendered or made available for such service, whether or not at the stipulated port of loading and continuing until noon of the date the vessel is tendered back to the U. S. Maritime Commission free of cargo and/or ballast at a United States port except as may otherwise be mutually agreed in specific cases. In short, the period of service which normally will be considered as being properly chargeable to Army or Navy will be for a full round voyage. However, if other suitable employment can be found for a vessel by the owner in the general area in which Army or Navy cargo is discharged, the voyage period for which billing will be rendered will be adjusted accordingly. The Departments will be billed at the applicable per diem rate for the full period of time during which the vessel operated in their service except as otherwise provided herein.

(2) If, after assignment to Army or Navy service, a vessel is *wholly* prevented from prosecuting her voyage as a result of a breakdown in her machinery or equipment requiring extensive or major repairs, or by dry docking, or by other causes for which the Commission is responsible, an appropriate adjustment in the per diem billing will be made, provided however, that any such adjustment will not be considered for any disability which covers a period less than one full day of 24 hours.

(3) In the event a part commercial or other non-military cargo is carried with the approval of the owner during any voyage for which charges on a per diem basis are to be billed, the vessel involved will be granted an appropriate credit therefor to the extent of the net revenue received for the transportation of such cargo. However, in no instance shall the credit exceed the per diem hire accruing for the leg of the voyage involved. "Net Revenue", as here used, means the amount remaining after deduction of any expense borne by the Commission in handling such cargo, that is, loading, trimming and discharging costs, accessorial and other charges, brokerage, agency fees, commissions, etc.

Section V. General Terms and Conditions—Troopships

(1) In general, any troopship allocated to military service will be considered as operating therein from noon of the date the vessel is tendered or made available for such service whether or not at the stipulated port of embarkation and continuing until noon of the date the vessel is tendered back to the U. S. Maritime Commission free of troops, impedimenta, cargo and/or ballast at a United States port except as may otherwise be mutually agreed in specific cases.

(2) The provisions as set forth in Section IV, paragraph 2, respecting disabilities of dry cargo and refrigerator vessels, including appropriate adjustments in per diem billings, shall also apply with regard to troopships.

(3) Commercial fare-paying passengers will not be transported on troopships when allocated to military service.

* * * * *

Instructions respecting billing and collecting from the War and Navy Departments will be issued by the Finance Department.

(Sgd.) F. M. DARR
F. M. Darr
Director of Traffic

January 24, 1947

[Circular Letter to Bareboat Charterers Concerning Approval of Subcharter Rates, etc.]

UNITED STATES MARITIME COMMISSION

Washington

Operations Department

CIRCULAR LETTER

To All Bareboat Charterers

Gentlemen:

It has been brought to our attention that in some instances operators of bareboat chartered vessels with world-wide trading privileges have not been complying with the provisions of their bareboat charters with the U. S. Maritime Commission. We bring to your attention the world-wide trading limits clause which reads as follows:

"World-Wide trading (a) in the foreign and/or domestic trade of the United States carrying such bulk cargoes or cargoes of one commodity *as may be approved by the owner* moving under contract in full cargo lots, with privilege of carrying on deck, cargo of one commodity of type different from that carried under deck *as may be approved by the owner;* and/or (b) on intermediate voyages between foreign ports (i) in berth service provided such service does not compete with an established U. S. flag general cargo berth service *as determined by the owner* or (ii) carrying in full cargo lots such cargoes *as may be approved by the owner.*"

In order that there be no further misunderstandings we bring to your attention a few of the requirements which

must be adhered to in order to avoid violation of your bareboat charter.

(1) *All* proposed voyages must be submitted to this office for approval *prior* to the actual fixing of the vessel. This may be done by telephone or telegram, setting forth rates, terms and conditions of the proposed venture. (It is suggested that your offers for fixtures be made subject to the approval of the Maritime Commission.)

(2) After a proposed voyage with its attendant rates, terms and conditions has been approved, a certified copy of all charters, booking agreements, or contracts of affreightment shall be submitted to this office. (If this has not been done, copies of all charters, etc., should be submitted to this office immediately.)

(3) Voyages involving cargoes moving for the account of the Army and/or Navy will *not* be approved for more than one port of loading and one port of discharge except in isolated cases, and are subject to the provisions of Paragraph (1) of this letter.

(4) Voyages provided for employment of vessels for operation on the berth of a foreign flag operator will *not* be approved under any circumstances.

(5) Voyages of vessels fixed for the carriage of grain are *not* to be fixed on charter forms granting the option of loading flour.

Bareboat charterers who fail to comply with the foregoing requirements and the provisions set forth in W.S.A. Bareboat Regulation No. 3 may violate the provisions of their fleet charter and incur the penalties set forth therein. Kindly be guided accordingly.

Yours very truly,

(Sgd.) F. M. Darr
F. M. Darr
Director of Traffic

February 10, 1947

Volume II Exhibit E-11

[Copies of Telegrams Showing Approval by Maritime Commission of Subcharter Rates, etc.]

COPY

WESTERN UNION
TELEGRAM

[January 28, 1947]

WUAE8 DL PD GOVT - BOSTON MASS JAN28 526P

REOURTEL 24th ALLOCATING WILLIAM H KENDRICK AND WILLIAM MCKINLEY YOUR ACCOUNT UNDER MARITIME BAREBOAT CHARTER. THIS IS TO ADVISE CHARTER PARTY WILL RESTRICT VESSEL'S USE TO DOMESTIC COAL TRADE AT LAST POSTED OPA RATES AND THESE VESSELS WILL BE CONSIDERED A SEPARATE FLEET FOR RECAPTURE PURPOSES. THESE CHARTERS GRANTED ON CONDITION THAT YOUR OWNED VESSELS PRESENTLY OPERATING IN DOMESTIC COAL TRADE WILL BE RETAINED THEREIN DURING PERIOD OF CHARTER. THE MERRIMAC SEAM PRESENTLY UNDER MARITIME BAREBOAT CHARTER YOUR COMPANY IS TO BE TRANSFERRED TO THE DOMESTIC COAL TRADE FLEET CHARTER IN ACCORDANCE WITH THE ABOVE UPON HERE NEXT ARRIVAL AT NEWPORT NEWS. REQUIRE YOUR PROMPT ACKNOWLEDGEMENT AND ACCEPTANCE OF THE ABOVE CONDITIONS. ADVISE DATE AND HOUR MERRIMAC SEAM TRANSFERRED TO DOMESTIC COAL TRADE FLEET CHARTER.

J FRIEDLANDER JR. U.S. MAR COMM 502 WASH D.C.

COPY

WESTERN UNION
TELEGRAM

March 25 1947

Mr. E. A. Terrio,
Asst. Director of Traffic
U.S.MARITIME COMM
Wash. D.C.

Have closed SS GEORGE VANCOUVER load cargo. coal April fifth to fifteenth for Genoa. Rate thirteen dollars ninety five cents. Please approve charter.

R.C.Goodwin, V.P.
Mystic Steamship Div. EG&F

Chge Sign.
5:00 pm

COPY

WESTERN UNION
TELEGRAM

TWVAGOVT - WUX WASHINGTON DC MAR 26 349P
R C GOODWIN, VICE PRESIDENT MYSTIC STEAMSHIP
DIVISION EASTERN
GAS & FUEL ASSOCIATES

RETEL GEORGE VANCOUVER COAL FOR GENOA WE APPROVE.

E A TERRES USMARITIME COMM WASHN DC.414P.

RWUAG 166 VG

COPY

WESTERN UNION
TELEGRAM

April 8, 1947

Mr. E. A. Terres,
Assistant Director of Traffic
U.S. Maritime Comm
Wash. D.C.

HAVE CHARTERED SS GEORGE VANCOUVER TO FRENCH LOAD COAL NORTH ATLANTIC PORTS ABOUT APRIL 28th AT SIXTY CENTS OVER. SHOULD VESSEL NOT REPORT UNTIL MAY RATE TO BE FIFTY CENTS OVER. PLEASE APPROVE.

R.C.Goodwin,V.P.
Mystic Steamship Div.
E.G.&F.ASSOC

Cage Sign
8 pm

COPY

WESTERN UNION
TELEGRAM

AWU BAG 23 GOVT NL PD-WUX WASHINGTON DC. APR 9
R C GOODWIN MYSTIC STEAMSHIP CO.
EASTERN GAS & FUEL ASSOCIATES

APPROVE VOYAGE GEORGE VANCOUVER LOAD COAL NORTH HATTERAS TO [FRENCH]

E A TERRES U S MAR COMM. 845

COPY

WESTERN UNION
TELEGRAM

April 25, 1947

Mr. E. A. Terres
Assistant Director of Traffic
U. S. Maritime Commission
Washington, D.C.

Have chartered SS JAMES BOWDOIN to French on coal loading about June 1st. Also SS EMILY DICKINSON to French on coal loading about May 25th. Please approve.

R.C.Goodwin,V.P.
Mystic SS DIV.
E.G.&F.ASSOC.

Chge Sign.
T.D.11:25 am

COPY

WESTERN UNION
TELEGRAM

April 28, 1947

Mr. E. A. Terres
Assistant Director of Traffic
U. S. Maritime Commission
Washington, D. C.

Retel JAMES BOWDOIN and EMILY DICKINSON both chartered at full W.S.A. old rates and the usual French options loading Philadelphia, Hampton Roads or Baltimore American Welsh Form. Freight payable New York without discount on bill of lading quantity. Total of all commissions two and half percent. fortyeight hour free time at loading port reduced twentyfour hours unless vessel sooner berthed. Twentyfour hours free time at discharging berth.

(END FIRST PAGE)

COPY

WESTERN UNION
TELEGRAM

(CONT.)

April 28, 1947

No despatch figured on these times. The five W.S.A. clauses added and charter tied in to present bare boat charter.

R.C.Goodwin, V.P.
Mystic S.S. Div.
E.G.&F.Assoc.

Chge M.S.S. Div.
T.D. 5:20 pm

COPY

WESTERN UNION
TELEGRAM

[April 29, 1947]

XWA593 GOVT DL PD-WUX WASHINGTON DC 29 440P
R.C.GOODWIN PRES
MYSTIC SS DIV. BSN

RETEL JAMES BOWDOIN EMILY DICKINSON WILLIAM MCKINLEY AND WILLIAM BEVAN APPROVE ALL VOYAGES—

E A TERRES U.S. MARITIME COMMISSION

COPY

WESTERN UNION
TELEGRAM

May 15 1947

Mr. E. A. Terres
Asst. Director of Traffic
U. S. Maritime Commission
Washington, D. C.

Have chartered SS EMILY DICKINSON to British load sugar for England about July 5th SanDomingo $16.00 Cuba $17.50. Usual London form including five Maritime Commission clauses. Please approve.

R.C.Goodwin, V.P.
Mystic SS DIV.
E.G.&F.Assoc.

Chge M.S.S. Div.
T.D. 4:35 pm

COPY

WESTERN UNION
TELEGRAM

WUAE 1 12 P-WASHDC May 16 128P

MYSTIC STEAMSHIP CO-BSN MASS

APPROVE EMILIE DICKINSON SUGAR CARGO $16.00 SAN DOMINGO AND $17.50 CUBA ANKUKAY

E A TERRES US MAR COMM WASH FC CFM $16.00 $17.50.

(51) PLS PO RWUAF RWUAEV 112 VG

COPY

WESTERN UNION
TELEGRAM

July 9, 1947

E. A. Terres,
Assistant Director of Traffic
U. S. Maritime Commission
Washington, D. C.

Have chartered SS GEORGE VANCOUVER one trip to French at $1.75 under American Welch form loading August 10th. Please approve.
Also chartered EMILY DICKINSON load coal for French August 25th at $10.40.
Chartered three voyages SS WILLIAM BEVAN to Dutch load coal at $9.15 one voyage. Please approve.

R. C. Goodwin, V.P.
Mystic Steamship Div.
E.G.&F.Assoc.

Chge. Sign.
4.16 pm

COPY

WESTERN UNION
TELEGRAM

WASHINGTON DC JULY 11 1947

R.C. GOODWIN, VICE PRES
MYSTIC STEAMSHIP DIV

APPROVE FIXTURES SS GEORGE VANCOUVER SS EMILY DICKINSON SS WILLIAM BEVAN

E A TERRES ASSISTANT DIRECTOR OF TRAFFIC

WESTERN UNION
TELEGRAM

WUAB 14 GOVT DL PD=WUX WASHINGTON DC AUG 15 428P

EASTERN GAS & FUEL ASSOCIATES (MYSTIC SS DIVISION)=

EFFECTIVE IMMEDIATELY WITH RESPECT TO ALL USMC BARE BOAT CHARTERED VESSELS WITH THE EXCEPTION OF CONTRACTS ALREADY ENTERED INTO FOR CONSECUTIVE VOYAGES THE US MARITIME COMMISSION WILL APPROVE ONLY COAL AND GRAIN FIXTURES FROM U S PORTS MADE ON WARSHIPVOY (REVISED) 8/15/44 FORM OF CHARTERPARTY WITH APPLICABLE TERMS AND

CONDITIONS AS SET FORTH IN THE WSA RATE ORDERS PLEASE BE GUIDED ACCORDINGLY=

G H HELMBOLD U S MAR COMM. 8/15/44 WSA. 759A

COPY

WESTERN UNION
TELEGRAM

August 25, 1947

Mr. E. A. Terres
Assistant Director of Traffic
U.S. Maritime Comm.
Wash. D. C.

We have chartered SS WILLIAM MCKINLEY AND SS GEORGE VANCOUVER to Italians for loading approximately Sept 3 and Sept 23 respectively coal for Italy at $9.95 per gross ton Warship Form Charter. We now request your approval these charters.

R.C.GOODWIN, V.P.
Mystic Steamship Div.
E.F.&F. ASSOC.

Chg.Sign
4:00 pm

COPY
WESTERN UNION
TELEGRAM

WUAG45 19/18 DL COLLECT - WUX WASHINGTON DC SEPT 9 1032A

R C GOODWIN, V.P. MYSTIC SS CO

CONFIRM TELEPHONE CONVERSATION APPROVE WILLIAM MCKINLEY AND GEORGE VANCOUVER COAL ACCOUNT ITALIANS AT $9.95 WARSHIPVOY FORM CHARTER

E A TERRES US MARITIME COMMISSION

Volume II Exhibit E-4

[War Department Time Charter Clause Providing for Increase in Rate if Bareboat Basic Charter Rate were Increased]

[Typical clause (Article 13C) from Contract No. W-45-045 tc-758, dated January 24, 1947 between War Department and Eastern Gas and Fuel Associates for time charter of SS ANDREW STEVENSON.]

C. Price Adjustment for Changes in United States Maritime Commission Charter Hire Rates. If the vessel is bareboat chartered from the United States Maritime Commission, the per diem rates of compensation set out in Article 2 hereof are based upon the Owner paying to the United States Maritime Commission a basic charter hire (without regard to the additional charter hire payable pursuant to the Merchant Ship Sales Act of 1946) computed on the basis of fifteen per cent per annum of the estimated statutory sales price for any vessels chartered from the Maritime Commission. In the event that such basic charter hire is greater or less than fifteen per cent per annum of the estimated statutory sales price for any such vessel, the rate of compensation specified in Article 2 hereof will be adjusted in the amount that such basic charter hire is greater or less than fifteen per cent per annum on the estimated statutory sales price.

Volume II Exhibit E-15

[Instructions, Regulations, Etc., Indicating That Payments of Additional Charter Hire Were Tentative, Conditional, and Subject to Reservation of Rights Under the Charters or Otherwise]

In addition to the two sections from the charter and the regulations quoted in Point III-E, pages 39-40, of the reply brief, there was a further regulation (46 C.F.R. 299.31(k)) providing that the charterer was entitled to apply for refund upon a public voucher containing the following statement:

> Payment by the U. S. Maritime Commission of all or any part of the amounts claimed herein will not be construed as an approval of the correctness of the amounts stated to be due the claimant nor as a waiver of any of the rights or remedies of either party under the terms of the said agreement or otherwise.

Preliminary instructions were also issued to the charterers by the Commission in November 1946, which stated in part:

> For the guidance of charterers in the preparation of the aforementioned statements, the following preliminary and tentative instructions are issued, upon the express understanding that neither their issuance by the Commission nor their observance by the charterer shall prejudice the rights of either under the applicable Charter Agreement, or otherwise, and that the Commission reserves the right to prescribe other bases for the determination of additional charter hire at the time of the annual or final accounting under the respective agreements.

On May 14, 1951, Martime issued the following instruction to charterers:

> Where a voucher check is tendered by the Charterer, it is requested that no reference be made thereon

through restrictive legend or otherwise to the effect that it is a final settlement. The accompanying letter of transmittal should state that the remittance is *on account* of additional charter hire due the Maritime Administration and is subject to adjustment upon the completion of final accounting between the Charterer and the Martime Administration and that *neither the tender of such payment by the Charterer, nor its acceptance by the Maritime Administration shall be construed as an approval of the correctness of the amount thereof; nor as a waiver of the rights or remedies of either party under the terms of the agreements involved or otherwise.* ("on account" emphasized by Maritime)

Volume II Exhibit E-15

[Correspondence Between Charterers and Maritime Commission Concerning Reservations of Rights]

BLIDBERG ROTHCHILD CO. INC.
SHIP OPERATORS AND AGENTS
80 BROAD STREET
NEW YORK 4, N. Y.

By Hand

Your Ref: OM35/L25-6-2:43002 (BAM)

April 28, 1954

Mr. J. G. Barkan, District Comptroller,
Maritime Administration,
U. S. Department of Commerce,
45 Broadway,
New York 6, New York.

Subject: Accounting Under Bareboat Charter Agreement SHIPSALESDEMISE 303 Contract MCc-41814 and the Foreign Trade Addendum thereto, for the period January 1, 1947 to November 30, 1949

Supplementary Accounting Under Bareboat Charter Agreements WARSHIPDEMISEOUT 203 Contract WSA-13104 and SHIPSALESDEMISE 303 Contract MCc-41814 for the Period July 1, 1946 to December 31, 1946

Dear Sir:

Reference is made to your letter of April 16, 1954, received April 19, 1954, concerning the above accountings. This letter is to advise you that we do not concur in the unilateral adjustments which your auditors have made in our accountings nor do we accept the accountings as adjusted further. We are returning herewith the duplicate copy of your letter unsigned so that there may no misunderstanding as to our position.

We repeat and reiterate our prior protest with respect to the accounting theories and rulings heretofore followed by your auditors, and particular protest is made with respect to the following points:

1. The requirement that additional charter hire be paid in excess of the amounts permitted under the law, i.e., all amounts in excess of 50 percent of the profits after an allowance for 10 percent of capital necessarily employed.

2. The refusal to permit cumulative accounting for the entire period of operation under the bareboat charters.

3. The requirement that separate accountings be made of additional charter hire for the period before and after September 1, 1947.

4. The failure to make reimbursement to Blidberg Rothchild Co. Inc., for various repairs, including those caused by latent defects which are for the account of the Maritime Administration.

5. The formula used in the definitions with respect to computing capital necessarily employed and net voyage profit.

6. The arbitrary limitations of allowable post-redelivery overhead.

7. The disallowance from income from other operations of the profit portion of fees earned from managing ships owned by others.

It is our contention that the position taken by the Martime Administration with respect to each of the above items and other problems not here listed is erroneous either under the bareboat charter contract or the applicable provisions of the Merchant Ship Sales Act, 1946, and the Merchant Marine Act, 1936. For that reason, we cannot accept your determinations with respect to these disputes nor the adjustments mentioned in your letter of April 16, 1954.

We will submit very shortly an accounting statement prepared in accordance with the proper and correct methods of accounting under the law and the contract and a request for reimbursement of overpayments heretofore required by the Maritime Administration.

Very truly yours,

BLIDBERG ROTHCHILD CO. INC.

By: (Signed) SYLVESTER E. ROTHCHILD
President.

SER:UA
Encl.

U. S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
WASHINGTON 25, D. C.

Address reply to
Maritime Administration
and refer to File No.
QM35/L10-5-2:453

December 30, 1954

Blidberg Rothchild Company, Inc.,
80 Broad Street,
New York 4, New York.

Gentlemen:

Subject: Invoice 207-284—$103,652.90 (Balance)
Dated January 24, 1952
Invoice 411-142—$90,815.86
Dated May 17, 1954

Reference is made to our letter of December 15 and your reply of December 28, 1954, relative to the payment of the subject invoices for additional charter hire due in accordance with provisions of Clause 13 of the Charter Contracts.

This office is aware of the questions raised by you with regard to the accountings on which the subject invoices are based; however, the provisions of the charter agreement are binding upon your Company to pay such amounts as were billed to you with the understanding that refunds will be made of any amounts determined through supplementary accountings, to have been overpaid.

Accordingly, it is suggested that you remit the amounts presently established as being due the United States for additional charter hire and promptly take the necessary action to finally resolve with our District Comptroller, the questions relating to the accountings previously approved by him. Your rights to recover any amounts which may

be determined by such subsequent action to have been overpaid, are reserved to you in the charter agreement.

Prompt action by your company will avert the placing of a government-wide set-off payment order as contemplated in our letter of December 15, 1954.

Very truly yours,

/Sgd./ A. R. BOONE
Acting Comptroller

U. S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
WASHINGTON 25, D. C.

Address reply to
Maritime Administration
and refer to File No.
QM92/L10-5-2:453

July 15, 1955

James Griffiths & Sons, Inc.
914 Second Avenue
Seattle 4, Washington

Attention: Mr. J. D. McMasters,
Secretary

Gentlemen:

Subject: Invoice 108-171—$6,169.29 (Balance)
Dated February 9, 1951

Reference is made to the subject invoice, to our letter of May 19, 1955, and to your reply of July 7, 1955, concerning additional charter hire due the United States pursuant to the provisions of Clause 13, Part II of WARSHIPDEMISEOUT 203 Contract WSA-13203 and SHIPSALESDEMISE 303 Contract MCc-41865, which provisions were quoted in our letter of May 19, 1955.

In your letter of July 7, 1955, you state that you had taken exception to the adjustment of the Administration's Auditor with respect to W. S. A. liquidation fees; you further state that you understand that other steamship companies have taken the same position in this matter and, you have been advised that a similar case is being or will shortly be argued in the Courts, therefore, you are unable to comply with our request for an early settlement of this invoice.

From the provisions of Clause 13 quoted in our letter of May 19, 1955, it is evident that situations such as you point out in your letter were anticipated at the time of entering into the contracts, and in view thereof, provisions were placed in the contracts which would require the charterer to pay additional charter hire to the government on a preliminary basis with a further provision for refunding to the charterer of any overpayments resulting from subsequent adjustments.

In regard to the last paragraph of your letter, this office would not consider it proper to defer collection action because of pending litigation, especially since such litigation is not in connection with this specific case, but would prefer to handle this matter in accordance with Clause 13 of the service agreements.

Therefore, this office would appreciate your remittance to cover the subject invoice with the understanding that if any subsequent action results in credits due your company, the amount of such credits will be promptly refunded.

Very truly yours,

WESLEY C. CLARK
Wesley C. Clark
Chief, Division of Credits and Collections

U. S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
WASHINGTON 25, D. C.

Address reply to
Maritime Administration
and refer to File No.
QM147/L10-5-2:453

Mar 8, 1955

North Atlantic and
Gulf Steamship Company Incorporated
120 Wall Street
New York 5, N. Y.

Gentlemen:

Subject: Invoice 207-228—1/14/52—$4,650.00 (Balance)
Invoice 506-242—12/17/54—$125,778.84

Reference is made to our letter of February 9 and your reply of February 24, 1955, relative to the payment of the subject invoices for additional Charter Hire due in accordance with the provisions of Clause 13, Part II, of the Charter Contracts.

In your letter of February 24 you state as follows:

"We agree that the provisions regarding the preliminary payments of Charter Hire are quite clear, however, we feel that this question involves payment of additional Charter Hire as determined on the basis of final audit. The amount of additional Charter Hire indicated on your invoice is the amount shown on the audit report prepared by your local district auditor, however, if you will review your files you will find that this audit report was accepted only on the basis that it was to be amended by supplemental accountings."

Once again we would like to call your attention to the last part of Clause 13 of the Agreements which states as follows:

" * * * that such payment of additional charter hire shall be deemed to be preliminary and subject to adjustment either at the time of the rendition of preliminary statements or upon the completion of each final audit by the Owner, at which time such payments will be made to the Owner as such preliminary statements or final audit may show to be due, or such overpayments refunded to the Charterer as may be required."

Under the terms of the Agreements quoted in part, above, your company is indebted to the United States for additional Charter Hire at this time.

In reference to the last paragraph of your letter calling our attention to the fact that your Company has a suit pending against the United States Government; we fail to see how this pending suit has any bearing whatsoever on the payment of the subject invoices, for amounts due this Administration pursuant to the provision of the Charter Agreements, and binding upon your company to pay.

Accordingly, it is requested that you remit the amounts presently established as being due the United States for additional Charter Hire and promptly take the necessary action to finally resolve with our District Comptroller the questions relating to the accountings previously approved by him. Your rights to recover any amounts which may be determined by such subsequent action to have been overpaid, are reserved to you in the Charter Agreement.

Very truly yours,

WESLEY C. CLARK
Wesley C. Clark
Chief, Division of Credits and Collections

Volume II Exhibit E-18

[Letter Concerning Final Audit and Summary of Profits and Losses]

U. S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
WASHINGTON 25, D. C.

Address reply to
Maritime Administration
and refer to File No.
QM67/L25-6-2:431

Nov 12 1954

Eastern Gas and Fuel Associates
(Mystic Steamship Division)
250 Stuart Street
Boston, Massachusetts

Gentlemen:

Subject: Supplementary Accountings Under General Order 60, Supplement 21, Covering Operations Under SHIPSALESDEMISE 302, Contract MCc-41881 and the Coastwise Coal Trade and Foreign Trade Addenda Thereto—For the Period November 1, 1946 to December 31, 1947

With respect to the subject supplementary accounting which was submitted with your public voucher dated December 7, 1953, there is attached copy No. 2 of the revised report prepared by the District Comptroller in New York and approved on November 10, 1954.

From Exhibit "AA"-1946-1947-Revised of the revised report it will be noted that Additional Charter Hire accrued to the Administration in the total amount of $528,306.68, which amount you are directed to pay to the Administration, less amounts heretofore paid on account thereof.

The attached revised accounting covers all items recorded through July 31, 1954, and represents a final determination of additional charter hire under the subject bareboat charter agreements. However, the accounting may be reopened for adjustment should any substantial error or omission later develop.

Your public voucher in the amount of $57.663.25 is returned herewith for cancellation.

Very truly yours,

B. W. HARVEY
B. W. Harvey
Chief, Division of Audits

Enclosures

[Schedule Attached to Letter of November 12, 1954]

[illegible]
MARITIME ADMINISTRATION

[illegible]
([illegible] SHIPPING DIVISION)

Page 1

EXHIBIT-"AA"-1946-1947-Revised

COMPUTATION OF ADDITIONAL CHARTER HIRE UNDER SHIPSALES-SRS
AND THE COASTWISE COAL TRADE AND FOREIGN TRADE ADDENDA THERETO FOR THE PERIOD FROM NOVEMBER 1, 1946 TO DECEMBER 31, 1947
BASED ON USE OF NET MONTH REQUIREMENTS AS "CAPITAL NECESSARILY EMPLOYED"

	Total	1946 SHIPS.LEASE-SRS Contract MSc-41861 DRY CARGO Coastwise Period 11/1/46	1946 SHIPS.LEASE-SRS Contract MSc-41861 DRY CARGO Offshore to 12/31/46	1947 SHIPSALES-SRS-308 CONTRACT MSC-41861 DRY CARGO Coastwise Period 1/1/47 to 7/31/47	1947 SHIPSALES-SRS-308 CONTRACT MSC-41861 DRY CARGO Offshore Period 1/1/47 to 10/31/47	1947 SHIPSALES-SRS-308 CONTRACT MSC-41861 FOREIGN TRADE ADDENDUM Period 1/1/47 to 12/31/47
Cumulative Net Voyage (Loss) and Allowable Return of 10% per annum as per Exhibit-"AA" of charterer's original accounting, approved May 6, 1948		$ (5,714.19)	$ (4,488.88)			$ (99,814.88)
Cumulative Net Voyage Profit in excess of 10% per annum of "Capital Necessarily Employed" as per Exhibit-"AA" of approved accounting dated May 6, 1948				$ 32,814.48	$ 646,878.88	
ADJUSTMENT ATTRIBUTABLE:						
Reverse Net Voyage Profit or (Loss) and Allowable Return of 10% per annum of "Capital Necessarily Employed"		5,714.19	4,488.88	(32,814.48)	(646,878.88)	99,814.88
Reinstate "Allowable Return" of 10% per annum on "Capital Necessarily Employed" as per Exhibit-"AA" of approved accounting, dated 5/6/48		881.44	1,811.92	3,480.88		6,488.88
Reinstate correct "Allowable Return" of 10% per annum on "Capital Necessarily Employed" as per Schedule-"A-1"-Revised, attached					21,778.81	
Reinstate adjusted Profit or (Loss) - Revised Exhibit-"C"		(5,684.78)	(4,888.48)	32,884.88	788,888.88	(848,488.48)
Deficiency Carry Forward from 1946				(5,184.18)	(5,888.47)	
Cumulative Net Voyage (Loss) and Allowable Return of 10% per annum on "Capital Necessarily Employed"		$ (5,184.18)	$ (5,888.47)			$ (848,888.44)
Cumulative Net Voyage Profit in excess of 10% per annum of "Capital Necessarily Employed"				$ 88,818.44	$ 718,787.78	
Additional Charter Hire:						
SHIPSALES-SRS-308 - Dry Cargo, Coastwise - (881 Terminated Days; 48 Terminated in 1946 and 888 in 1947):						
$88,818.44 @ 88% $11,888.78				$ 11,888.78		
SHIPSALES-SRS-308 - Dry Cargo, Offshore - (1782 Terminated Days):						
$178,888.88 @ 88% $88,188.88						
388,488.88 @ 78% $87,888.88						
178,187.78 @ 88% 188,888.88						
$718,787.78 $816,888.88						
					$ 816,888.88	
SHIPSALES-SRS-308 - Foreign Trade Addendum (818 Terminated Days)						$ None
Total Additional Charter Hire	$ 888,884.88			$ 11,888.78	$ 816,888.88	-0-

NOTE: Parentheses in money columns indicate red figures.

[From Maritime Administration Audit Report of August 20, 1954]

Volume II Exhibit R

[Letter Referring to Disputed Items in Final Accounting]

MYSTIC STEAMSHIP DIVISION
EASTERN GAS AND FUEL ASSOCIATES
GENERAL OFFICES 250 STUART STREET, BOSTON, 16, MASS.

February 15, 1955

Mr. B. W. Harvey
Chief, Division of Audits
Maritime Administration
Washington 25, D. C.

Re: Supplementary Accountings under General Order 60, Supplement 21, covering Operations under SHIPSALESDEMISE 303, Contract MCc-41881 and the Coastwise Coal Trade and Foreign Trade Addenda thereto—For the Period November 1, 1946 to December 31, 1947

Dear Sir:

This will refer to your letter of December 7, 1954, in the above matter, with which you returned our public voucher in the amount of $57,663.25 representing part of the charter hire heretofore overpaid to the Maritime Administration, and forwarded your invoice in the amount of $63,430.59 for recapture allegedly due the Administration. As we have previously indicated to you, there are a number of disputed matters involved in our charter accounting.

In the first place, the expenses arising out of the operations and redelivery of two of the vessels under charter to us, the SS EMILY DICKINSON and the SS JAMES BOWDOIN, should have been included in the accountings under Contract MCc-41881 for the period prior to September 1, 1947. Furthermore, protest has heretofore been made with respect to the requirement of the Maritime Adminis-

tration that recapture of earnings be paid in excess of that permitted by Section 709(a) of the Merchant Marine Act, 1936, which was incorporated in Section 5(e) of the Merchant Ship Sales Act of 1946 and made applicable to all charters entered into thereunder. The pertinent provisions of Section 709 limit recapture to one-half of excess earnings after an allowance of 10 percent of capital necessarily employed, whereas the Maritime Administration has claimed recapture in certain instances at the rates of 75 percent and 90 percent of such excess earnings.

Finally, there is the problem of the refusal of the Maritime Administration to permit the carryforward of profits from one accounting period to the next on a cumulative basis as is also provided in Section 709 of the Merchant Marine Act, 1936.

We attach hereto a summary reflecting our position as to the proper adjustments as outlined above. This summary indicates that the Maritime Administration has erroneously collected excess recapture in the amount of $220,358.72. For that reason, we must again not only respectfully decline to pay your invoice, but we also request payment in the amount of $220,358.72 covering the recapture erroneously collected.

Very truly yours,

MYSTIC STEAMSHIP DIVISION
EASTERN GAS AND FUEL ASSOCIATES

By C. R. WALTON
C. R. Walton, *Vice President*

CRW.mc
enclosures

[Schedule Attached to Letter of February 15, 1955]

MYSTIC STEAMSHIP DIVISION

EASTERN GAS AND FUEL ASSOCIATES

Calculation of Overpayment of Additional Charter Hire

U.S. Department of Commerce—Maritime Administration—Computation of net voyage profit—Ship Salesdemise 303 Dry Cargo-Offshore (Report August 20, 1954)		$712,707.72
Deduct inactive vessel expense of EMILY DICKINSON and JAMES BOWDOIN, which Maritime Administration excluded from period before September 1		110,326.89
Deduct loss 9/1/47 to 12/31/47 Foreign Trade Addendum—		
Maritime Administration	$246,892.44	
Less DICKINSON & BOWDOIN	110,326.89	136,565.55
		$246,892.44
Adjusted Net Voyage Profit		$465,815.28
Adjusted total additional charter hire at 50%		232,907.64
Additional hire previously paid	$464,876.09	
Deduct additional hire dry cargo-coastwise	11,609.73	453,266.36
Recapture erroneously collected		$220,358.72

Exhibit E-24

Vol. II Exhibit E-24

[Schedule Showing Vessels Under Bareboat Charter]

MYSTIC STEAMSHIP DIVISION
Eastern Gas and Fuel Associates
VESSELS UNDER BAREBOAT CHARTER FROM U.S.M.C.
1946 - 1947

Vessel	B.B.Charter #303 Contract No. MCc-41881	Date Executed by Chtr.	Date Of Delivery	Date Of Redelivery	Totals(A) Days Chtrd.	Totals(A) Chtr.Hire P'd. (Basic)	Terminated Voyage Days — Dry Cargo 11/1/46 - 12/31/46 CW	OB	Comb.	11/1/47 - 10/31/47 CW	OB	Comb.	F.T. Addendum 9/1/47 - 12/31/47 CW	OB	Comb.
S/S Emily Dickinson	Addendum #1	12/ 3/46	11/14/46	11/20/47	372	$ 97,713.75	-	-	-	-	372	372	-	-	-
" Merrimac Seam	Original	11/ 7/46	11/20/46	7/29/47	252	66,313.43	42	-	42	210	-	210	-	-	-
" William Bevan	Addendum #2	1/24/47	12/ 7/46	12/11/47	370	97,138.29	-	-	-	-	274	274	-	96	96
" Isaac Sharpless	Addendum #3	2/17/47	12/28/46	11/30/47	338	88,893.15	-	-	-	-	255	255	-	83	83
" Andrew Stevenson	Addendum #2	1/24/47	1/ 8/47	11/19/47	316(B)	82,997.00	-	-	-	-	257	257	-	59	59
" William McKinley	Addendum #5	5/28/47	2/20/47	12/19/47	303	79,350.45	-	-	-	49	152	201	-	102	102
" William Kendrick	Addendum #4	4/23/47	2/22/47	4/24/47	62	16,374.37	-	-	-	-	62	62	-	-	-
" James Bowdoin	Addendum #4	4/23/47	3/13/47	11/29/47	262(C)	68,529.31	-	-	-	-	262	262	-	-	-
" George Vancouver	Addendum #4	4/23/47	4/11/47	12/11/47	245	63,985.87	-	-	-	-	159	159	-	86	86
" Washington Irving	Addendum #6	6/ 9/47	5/21/47	11/14/47	178	46,499.28	-	-	-	-	112	112	-	66	66
Totals as included on Mystic S/S Division Final Accounting 8/1/51					2,698	$ 707,794.90	42	-	42	259	1905	2164	-	492	492
Differences- as noted by U.S.M.C.															
1) Basic Charter Hire- Per Cross Libel															
Total Chtr.Hire Paid- (Par.5, Page 3)						$1,172,872.01									
Less- "Addtl." Chtr.Hire Paid- As Agreed						$464,876.09									
- "Basic" " " " - As Above						707,794.90									
						1,172,670.99									
Difference						$ 201.02									
						201.02									
Total Per U.S.M.C.						$ 707,995.92									
2) Terminated Voyage Days considered by Mystic S/S as applicable to Acctg.Period- 1/1/47 - 10/31/47 but used by U.S.M.C. as being applicable to Foreign Trade Addendum period 9/1/47- 12/31/47 S/S "E.Dickinson" and S/S "J.Bowdoin"							-	-	-	-	(123)	(123)	-	123	123
Totals as Included by U.S.M.C. in Their Revised Sup. Accounting Report Dated 8/20/54							42	-	42	259	1782	2041	-	615	615

CW - 301 Days
OB - 1782 "
FTA - 615 "
2698

Notes
(A) - See Copies of Attached Statements(3) which were filed with Final Preliminary Determinations of Additional Charter Hire during 1947 - 1948
#1 - 11/1/46 - 12/31/46 - 42 Days - $ 10,916.25
2 - 1/1/47 - 11/30/47 - 2164 " - 568,052.35
3 - 9/1/47 - 12/31/47 - 492 " - 128,826.30
2698 " $707,794.90

(B) - Time Chartered to U.S.Army - 1/8/47 - 4/25/47

(C) - Time Chartered to U.S.Army - 3/13/47- 6/11/47

FAC
8/16/60

W. W. BATTIE & CO., INC.
STEAMSHIP BROKERS
PRODUCE EXCHANGE
NEW YORK

BOYD, WEIR & SEWELL, INC.
STEAMSHIP AGENTS
AND BROKERS
39 STATE STREET - NEW YORK

WELSH FORM
ADAPTED TO AMERICAN USE NOVEMBER, 1946
#700-A CM

New York, August, 2nd, 1947

It is this day mutually agreed, BETWEEN MYSTIC STEAMSHIP DIVISION, EASTERN GAS & FUEL ASSOCIATES, Bareboat chartered Owners of the American Steamship "WASHINGTON IRVING" of Portland, Ore., built 1942 at Portland, Ore., of 4374 tons net register or thereabouts, and about tons dead weight exclusive of bunkers, classed A-1 American Bureau of Shipping now and ASSOCIATION TECHNIJUE DE L'IMPORTATION CHARBONNIERE, Charterers.

1. That the said Steamer being tight, staunch and strong, and every way fitted for the Voyage, shall, with all possible dispatch, sail and proceed to NEW YORK, N.Y., PHILADELPHIA, PA., BALTIMORE, MD., NORFOLK or NEWPORT NEWS, VA., or CHARLESTON, S.C., at Charterers' option (one port only), as ordered on ~~arrival at lay days to count~~ and there load, always afloat, in the customary manner, from the Charterers, in such Dock as may be ordered by them a full and complete Cargo of NOMINATED Coal not exceeding 9,900 tons, nor less than 8,100 tons, and not exceeding what she can reasonably stow and carry, over and above her Tackle, Apparel, Provisions and Furniture; and being so loaded, shall therewith proceed, with all possible dispatch, to at Charterers' option, one or two safe ports NORTH FRANCE (Bordeaux-Dunkirk Range, both inclusive); or ANTWERP, Belgium or ROTTERDAM, Holland; or, at Charterers' option, one or two safe ports SOUTH FRANCE; or, at Charterers' option, one or two safe ports NORTH AFRICA (Casablanca-Tunisia Range, both inclusive). or so near thereunto as she can safely get, and there deliver her cargo alongside any Wharf, and/or Vessel and/or Craft, as ordered, where she can safely deliver, always afloat, but if required to shift, the expense of so doing to be paid by Consignees, and the time to count; on being paid Freight at the rate of As provided in Clause #26 on the reverse hereof U. S. Currency per ton ~~of 20 cwt. or 2,240 lbs. delivered, or on Bill of Lading quantity less two per cent at Receiver's option, to be declared in writing, before bulk is broken. If the Receiver should elect to weigh the Cargo at the port of destination, the weighing shall be done (by an official weigher) at his expense. The owner may provide a check weigher at Steamer's expense. Should any deficiency be alleged on the authority of such weighing it shall affect the freight only, from which no deduction shall be made for alleged shortage of cargo, any custom of the port of discharge notwithstanding, but the Owner shall furnish,~~ if required, a Statutory Declaration by the Master and other Officers that all the Cargo received on board has been delivered. The freight is in full of Loading, Trimming, and of all Port Charges, Pilotage, Agency Fees and Consulages on the Vessel. All Wharfage dues on the Cargo to be paid by the Charterers.

~~2. A sailing telegram to be sent to the Charterers or their Agents on Steamer leaving her last port, or in default twenty-four hours more to be allowed for loading. At least 7 days notice of approximate quantity of Cargo required and of steamer's expected date of arrival at port of loading or port of call for orders for loading port to be given to Charterers or their Agents.~~

2. The Cargo to be loaded into steamer with customary dispatch, but at not less than the average rate of 1500 tons per running day (excluding Bunkering time, Sundays, Custom House, Colliery, Legal and/or Local Holidays, and from noon on Saturday or the day previous to any such Holiday to 7 a. m. on Monday, or the day after any such Holiday, unless used) commencing 24 hours after steamer tenders and is ready to load, unless sooner berthed, whereupon time is to commence and written notice is given of the Steamer being completely discharged of inward cargo and ballast in all her holds, and ready to load, such notice to be given between business hours of 9 a. m. and 5 p. m., or 1 p. m. on Saturdays. Any time lost through riots, strikes, lock-outs, or any dispute between masters and men, occasioning a stoppage of pitmen, trimmers or other hands connected with the working or delivery of the coal for which the Steamer is stemmed, or by reason of accidents to mines or machinery, obstructions on the Railway or in the Docks; or by reason of floods, frosts, fogs, storms or any cause beyond the control of the Charterers, not to be computed as part of the loading time (unless any cargo be actually loaded during such time). In the event of any stoppage or stoppages arising from any of these causes continuing for the period of six running days from the time of the vessel being ready to load, this Charter shall become null and void; provided, however, that no cargo shall have been shipped on board the Steamer previous to such stoppage or stoppages. In case of partial holiday, or partial stoppage of Colliery or Collieries from any or either of the aforenamed causes, the lay-days to be extended proportionately to the diminution of output arising from such partial holiday or stoppage. If longer detained, Charterers to pay $1700.00 U. S. Currency per net register ton per running day (or pro rata for part thereof) demurrage. If sooner dispatched, Steamer to pay Charterers or their Agents $850.00 U. S. Currency per net register ton per running laydays (SAVED) day (or pro rata for part thereof) dispatch money. No deduction of time shall be allowed for stoppage, unless due notice be given at the time to the Master or Owner. If any dispute or difference should arise under this charter, same to be referred to three parties in the City of New York, one to be appointed by each of the parties hereto, the third by the two so chosen, and their decision, or any two of them, shall be final and binding, and this agreement may, for enforcing the same, be made a rule of Court.

4. The Cargo to be loaded, dumped and trimmed by men appointed by the Charterers at the tariff rate of the Port, at vessel owner's expense.

5. Bunker Coal to be kept properly separated from the Cargo to Charterers' satisfaction at the Steamer's expense and the quantity to be endorsed on the Bills of Lading. If any Cargo is carried in a hold communicating directly with the Stokeholds, the doors to be securely fastened on the Cargo side.

6. The Bills of Lading shall be prepared in accordance with the Dock or Railway weight in the form endorsed on Charter, and shall be endorsed by the Master, Agent or Owner, weight unknown, freight and all conditions as per this Charter, such Bills of Lading to be signed at the Charterers' or Shippers' Office, within twenty-four hours after the Steamer is loaded.

7. The Act of God, the King's Enemies, Restraints of Princes and Rulers, and Perils of the Seas excepted. Also Fire, Barratry of the Master and Crew, Pirates, Collisions, Strandings and Accidents of Navigation, or latent defects in or accidents to, Hull and/or Machinery, and/or Boilers, always excepted, even when occasioned by the negligence, default or error in judgment of the Pilot, Master, Mariners, or other persons employed by the Shipowner, or for whose acts he is responsible, not resulting, however, in any case from want of due diligence by the Owner of the Ship, or by the Ship's Husband or Manager. Charterers not answerable for any negligence, default, or error in judgment of Trimmers or Stevedores employed in loading or discharging the Cargo. The Steamer has liberty to call at any ports in any order, to sail without Pilots, to tow and assist vessels in distress, and to deviate for the purpose of saving life or property, and to bunker. It is also mutually agreed that this shipment is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc."

8. The Cargo to be taken from alongside by Consignees at Port of Discharge, free of expense and risk to the Steamer, at the average rate of as provided in Clause #26 on the reverse hereof tons per day, weather permitting, Sunday and Holidays excepted, provided Steamer can deliver it at this rate. If longer detained, Consignees to pay Steamer demurrage at the rate of $1700.00 U. S. Currency per net register ton per running day (or pro rata for that part thereof). If sooner dispatched, Steamer to pay Charterers or their Agents $850.00 U. S. Currency per net register ton per running lay days (SAVED) for part thereof) dispatch money. Time to commence twenty-four (24) hours, Sundays and Holidays excepted, after Steamer is ready to unload and written notice given, whether in berth or not, and the time allowable for discharging to be calculated on the basis of the Bill of Lading quantity. In case of strikes, lockouts, civil commotions, or any other causes or accidents beyond the control of the Consignees which prevents or delays the discharging, such time is not to count unless the Steamer is already on demurrage. Consignees to effect the discharge of the Cargo, Steamer paying ~~expense, steamer per ton of 20 cwt. or 2,240 lbs. on the Bill of lading quantity, and providing only steam, steam winches, winchmen, gins and falls.~~ at Charterers' risk and

9. The FREIGHT to be paid as provided in Clause #27 on the reverse hereof.

~~10. The Steamer to be free of address at Port of Discharge, but to pay the usual commission of Two per cent on the amount of Freight on signing Bills of Lading. Charterers have the option of making the Address Commission payable at Port of Discharge.~~

~~11. In case of damage, the same to be settled according to York/Antwerp Rules, 1924, and as if the vessel were British. Should the vessel put into any port or Ports leaky or with damage, the Captain or Owner shall, without delay, inform the Charterers thereof. Captain to telegraph Charterers in case of putting in anywhere.~~

12. Vessel not to tender before 9 a. m. on September 1st, 1947 and if Steamer be not ready at loading Port as ordered before 9 a. m. on September 15th, 1947 or if any wilful misrepresentation be made respecting the size, position or state of the Steamer, Charterers to have the option of cancelling this Charter, such option to be declared on notice of readiness being given.

13. Steamer to be consigned to Owners' Agents at Port of Loading, and At Port of Discharge

13a. Laydays to be reversible.

of call for orders for loading ports to be given to Charterers or their Agents.

3. The Cargo to be loaded into steamer with customary dispatch, but at not less than the average rate of 1500 tons per running day (excluding Bunkering time, Sundays, Custom House, Colliery, Legal and/or Local Holidays, and from noon on Saturday or the day previous to any such Holiday to 7 a. m. on Monday, or the day after any such Holiday, unless used) commencing 24 hours after steamer tenders and is ready to load, unless sooner berthed, whereupon time is to commence and written notice is given of the Steamer being completely discharged of inward cargo and ballast in all her holds, and ready to load; such notice to be given between business hours of 9 a. m. and 5 p. m., or 1 p. m. on Saturdays. Any time lost through riots, strikes, lock-outs, or any dispute between masters and men, occasioning a stoppage of pitmen, trimmers or other hands connected with the working or delivery of the coal for which the Steamer is stemmed, or by reason of accidents to mines or machinery, obstructions on the Railway or in the Docks; or by reason of floods, frosts, fogs, storms or any cause beyond the control of the Charterers, not to be computed as part of the loading time (unless any cargo be actually loaded during such time). In the event of any stoppage or stoppages arising from any of these causes continuing for the period of six running days from the time of the vessel being ready to load, this Charter shall become null and void; provided, however, that no cargo shall have been shipped on board the Steamer previous to such stoppage or stoppages. In case of partial holiday, or partial stoppage of Colliery or Collieries from any or either of the aforenamed causes, the lay days to be extended proportionately to the diminution of output arising from such partial holiday or stoppage. If longer detained, Charterers to pay $1700.00 U. S. Currency per net register ton per running day (or pro rata for part thereof) demurrage. If sooner dispatched, Steamer to pay Charterers or their Agents $850.00 U. S. Currency per net register ton per running laydays day (or pro rata for part thereof) dispatch money. No deduction of time shall be allowed for stoppage, unless due notice be given at the time to the Master or Owner. If any dispute or difference should arise under this charter, same to be referred to three parties in the City of New York, one to be appointed by each of the parties hereto, the third by the two so chosen, and their decision, or any two of them, shall be final and binding, and this agreement may, for enforcing the same, be made a rule of Court.

4. The Cargo to be loaded, dumped and trimmed by men appointed by the Charterers at the tariff rate of the Port, at vessel owner's expense.

5. Bunker Coal to be kept properly separated from the Cargo to Charterers' satisfaction at the Steamer's expense and the quantity to be endorsed on the Bills of Lading. If any Cargo is carried in a hold communicating directly with the Stokeholds, the doors to be securely fastened on the Cargo side.

6. The Bills of Lading shall be prepared in accordance with the Dock or Railway weight in the form endorsed on Charter, and shall be endorsed by the Master, Agent or Owner, weight unknown, freight and all conditions as per this Charter, such Bills of Lading to be signed at the Charterers' or Shippers' Office, within twenty-four hours after the Steamer is loaded.

7. The Act of God, the King's Enemies, Restraints of Princes and Rulers, and Perils of the Seas excepted. Also Fire, Barratry of the Master and Crew, Pirates, Collisions, Strandings and Accidents of Navigation, or latent defects in or accidents to, Hull and/or Machinery, and/or Boilers, always excepted, even when occasioned by the negligence, default or error in judgment of the Pilot, Master, Mariners, or other persons employed by the Shipowner, or for whose acts he is responsible, not resulting, however, in any case from want of due diligence by the Owner of the Ship, or by the Ship's Husband or Manager. Charterers not answerable for any negligence, default, or error in judgment of Trimmers or Stevedores employed in loading or discharging the Cargo. The Steamer has liberty to call at any ports in any order, to sail without Pilots, to tow and assist vessels in distress, and to deviate for the purpose of saving life or property, and to bunker. It is also mutually agreed that this shipment is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc."

8. The Cargo to be taken from alongside by Consignees at Port of Discharge, free of expense and risk to the Steamer, at the average rate of as provided in Clause #26 on the reverse hereof tons per day, weather permitting, Sundays and Holidays excepted, provided Steamer can deliver it at this rate. If longer detained, Consignees to pay Steamer demurrage at the rate of $1700.00 U. S. Currency per net register ton per running day (or pro rata for that part thereof). If laydays sooner dispatched, Steamer to pay Charterers or their Agents $850.00 U. S. Currency per net register ton per running lay days for pro rata for part thereof) dispatch money. Time to commence twenty-four (24) hours, Sundays and Holidays excepted, after Steamer is ready to unload and written notice given, whether in berth or not, and the time allowable for discharging to be calculated on the basis of the Bill of Lading quantity. In case of strikes, lockouts, civil commotions, or any other causes or accidents beyond the control of the Consignees which prevents or delays the discharging, such time is not to count unless the Steamer is already on demurrage, Consignees to effect the discharge of the Cargo, Steamer paying at Charterers' risk and expense, steamer per hour of 60 cwts, or 1,345 kilos, on the bill of lading quantity, and providing only steam, steam-winches, winchmen, gins and falls.

9. The FREIGHT to be paid as provided in Clause #27 on the reverse hereof.

10. The Steamer to be free of address at Port of Discharge, but to pay the usual commission of Two per cent. on the amount of Freight on signing Bills of Lading. Charterers have the option of making the Address Commission payable at Port of Discharge.

11. In case of demurrage, the same to be settled according to York/Antwerp Rules, 1924, and as if the vessel were British. Should the vessel put into any port or Ports leaky or with damage, the Captain or Owner shall, without delay, inform the Charterers thereof. Captain to telegraph Charterers in case of putting in anywhere.

12. Vessel not to tender before 9 a. m. on September 1st, 1947 and if Steamer be not ready at loading Port as ordered before 9 a. m. on September 13th, 1947 or if any wilful misrepresentation be made respecting the size, position or state of the Steamer, Charterers to have the option of cancelling this Charter, such option to be declared on notice of readiness being given.

13. Steamer to be consigned to Owners' Agents at Port of Loading, and At Port of Discharge

13a. Laydays to be reversible.

14. It is understood that no despatch money is collectible on the 24 hours mentioned in Clause No. 3.

15. Vessel to have the liberty of drydocking before commencement of loading under this Charter.

16. All notices under this Charter at Port of Discharge, or for orders, to be given in writing in Consignees' Agents' office on working days between the hours of 9 a. m. and 5 p. m. and 9 a. m. and Noon on Saturdays.

17. All Bills of Lading shall include the following: NEW JASON CLAUSE: In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

18. All Bills of Lading shall include the following:—"CLAUSE PARAMOUNT. This Bill of Lading shall have the effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April 16th, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender of the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any terms of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further."

19. All Bills of Lading shall include the following: BOTH-TO-BLAME COLLISION CLAUSE: If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier.

20. The Charterers' liability shall cease as soon as the cargo is shipped, and the advance of Freight, Dead Freight and Demurrage in Loading (if any) are paid, the Owner having a lien on the cargo for Freight, Demurrage and Average.

21. Penalty for non-performance of this Agreement, proved damages, not exceeding the estimated amount of Freight.

22. A commission of 4½ per cent. on the amount of Freight, Dead Freight and Demurrage is due by the Vessel and Owners on shipment of cargo to W. W. BATTIE & CO., Inc., Boyd, Weir & Sewell, Inc., and others.

23. The following clauses attached hereto are considered as part of this charterparty as though fully set forth herein: (i) Clause Paramount; (ii) Both-to-Blame Collision Clause; (iii) General Average Clause; (iv) Amended Jason Clause; (v) Liberties Clauses.

Clauses #24 through #33 on the reverse hereof to be considered part of this charterparty as though fully set forth above.

POUR L'ETAT ARMATEUR
ASSOCIATION TECHNIQUE DE L'IMPORTATION CHARBONNIERE
AGENCE DU MINISTERE DE LA MARINE MARCHANDE
POUR AUTORISATION D'ACTE - PARIS TRANSMISE
TRANSMISSION PAR LE GOUVERNEMENT DES
COMPTOIRS D'APPROVISIONNEMENT A PARIS

MYSTIC STEAMSHIP DIVISION
EASTERN GAS AND FUEL ASSOCIATES,
By L.C. Goodwin, Vice President.

24. Charterers have the option of shipping not more than 250 tons of COKE at the same rate of freight as the COAL, Charterers paying all additional expenses.

25. Owners to give ATIC, Room 1205, 44 Beaver Street, New York City, at least ten days' notice of steamer's expected readiness to load and approximate quantity vessel will lift; and ATIC, 44 Beaver Street, New York City, to declare name of loading port at least 7 days prior to vessel's expected readiness to load.

26. FREIGHT RATES: RATES OF DISCHARGE:

(a) Charterers have the option of discharging cargo in one of the Ranges mentioned below; if the vessel is loaded at Philadelphia, Baltimore, Norfolk or Newport News, the respective base rate of freight and the corresponding daily rate of discharge are to apply, as follows:

IF ONE PORT OF DISCHARGE USED:		U.S.CY.PER TON OF 2240 LBS.	DAILY RATE OF DISCHARGE
1. At a French Atlantic port(between Bordeaux and Dunkirk,both inclusive).....		$ 8.15	1000 Tons
Antwerp,Belgium or Rotterdam, Holland		7.15	2500 "
2. At a French Mediterranean port:	(Caronte	8.60	1300 "
	(Toulon	8.60	1300 "
	(Sete	8.75	1200 "
	(Nice	11.65	500 "
	(All other ports	9.20	1000 "
3. At a French North African port	(between Casablanca and Tunisia, both inclusive):		
	(Casablanca	6.85	1500 "
	(Algiers or Oran	8.40	1500 "
	(All other ports Algeria	9.85	750 "
	(Tunisia	9.85	750 "

(b) If the vessel is loaded at New York, N.Y., above base rates of freight to be increased Fifty Cents (50¢) U.S. Cy. per ton.

(c) If the vessel is loaded at Charleston,S.C., the above base rates of freight to be increased Fifty Cents (50¢) U.S. Cy. per ton.

(d) Charterers have the option of discharging at two ports in the same Range, in which case freight rate above to be increased Fifty Cents (50¢) U.S. Cy. per ton over the applicable rate to each port of discharge.

(e) If two ports of discharge are used, same to be in geographical rotation and vessel to be left in seaworthy trim for shifting between ports. Orders for second port of discharge, if used, to be given not later than on vessel's arrival at first port of discharge. At second port, time to commence when notice of readiness is given.

(f) If Casablanca is used as one of two ports in the North African Range, freight rate for Casablanca to be the same as the rate for Algiers.

(g) If Antwerp or Rotterdam is used, same to be sole port of discharge.

27. FREIGHT PAYMENT CLAUSE:

Full freight shall be deemed earned on the cargo as same is loaded aboard vessel, vessel and/or cargo subsequently lost or not lost. 90% of the freight to be paid by Charterers at New York in U.S. currency per ton of 2240 lbs. on Bill of lading quantity within eight days after the full set of signed original Bills of Lading, excluding one original which is to be placed aboard vessel in consignee's mail, and time sheets in quintuplicate signed by the Captain and shipper's agents in the port have been surrendered to ASSOCIATION TECHNIQUE DE L'IMPORTATION CHARBONNIERE, 44 Beaver Street, New York 4, N.Y. Balance of freight, extra freight, if any, despatch and/or demurrage to be settled in New York as above on presentation of final accounts with vouchers in quintuplicate signed by receivers or their agents and the Captain or Owners or their agents including time sheets at discharging ports.

28. Reference is hereby made to the declaration of trust establishing Eastern Gas & Fuel Associates dated July 18, 1929, a copy of which has been filed with the Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts. The name "Eastern Gas & Fuel Associates" refers to the trustees under said Declaration of Trust as trustees and not personally, and no trustee, shareholder, officer or agent of Eastern Gas & Fuel Associates shall be held to any personal liability in connection with the affairs of said Associates, but the trust estate only is liable.

29. It is understood that the Owners of the vessel (United States and/or Maritime Commission) have the right under Clause 14 of the bareboat charter existing between the Owners of the vessel and Mystic Steamship Division, Eastern Gas & Fuel Associates (Bareboat Charterers) to terminate the period of use of the vessel by giving written notice to the Bareboat Charterers at least 15 days prior to the termination of any voyage. Should the Owners of the vessel exercise this prerogative or any other prerogatives it may have under the bareboat charter existing with Mystic Steamship Division, Eastern Gas & Fuel Associates that might frustrate the performance of this charter, then this charter to be cancelled without penalty or liability on the part of any of the parties hereto. The Bareboat Chartered Owner shall have the option of substituting a similar Liberty steamer in a similar position if this charter is so cancelled.

30. This contract is subject to the approval of the U.S. Maritime Commission.

31. LIGHTERAGE CLAUSE:

If there is insufficient water for vessel to reach her ultimate port of discharge without lightening, Charterers undertake to discharge at one of the below listed lightening ports sufficient cargo, as required by Master, to enable vessel to proceed with safety to port of discharge. All extra expenses incurred thereby, including port charges at lightening port (see Note A below) to be for Charterers' account, and time occupied to count as laytime, excluding steaming time from lightening port to port of discharge. Notice of readiness will be given by Master at lightening port. (see Note B below).

NOTE A: It is understood that the term "extra expenses incurred" appearing in this clause means the difference between the total amount of usual vessel expenses in both ports (i.e., lightening port and ultimate port of discharge), and the amount vessel would have had to pay if discharging full cargo at the ultimate port of discharge. This latter amount to be shown by a proforma disbursement account drawn up by the vessel's agent and certified exact by the Consignee and/or A.T.I.C.

NOTE B: Notice of readiness to discharge is to be given at lightening port. Time to commence twenty-four (24) hours after vessel is ready to unload and written notice of readiness has been given, whether in berth or not. Sundays and holidays to be excepted, unless used, in which case time used for lightening only to count as laytime. Time to stop

3. At a French North African port (between Casablanca and Tunisia, both inclusive):			
(Casablanca	$ 6.85	1500	"
(Algiers or Oran	$ 8.40	1500	"
(All other ports Algeria	$ 9.85	750	"
(Tunisia	$ 9.85	750	"

(b) If the vessel is loaded at New York, N.Y., above base rates of freight to be increased Fifty Cents (50¢) U.S. Cy. per ton.

(c) If the vessel is loaded at Charleston,S.C., the above base rates of freight to be increased Fifty Cents (50¢) U.S. Cy. per ton..

(d) Charterers have the option of discharging at two ports in the same Range, in which case freight rate above to be increased Fifty Cents (50¢) U.S. Cy. per ton over the applicable rate to each port of discharge.

(e) If two ports of discharge are used, same to be in geographical rotation and vessel to be left in seaworthy trim for shifting between ports. Orders for second port of discharge, if used, to be given not later than on vessel's arrival at first port of discharge. At second port, time to commence when notice of readiness is given.

(f) If Casablanca is used as one of two ports in the North African Range, freight rate for Casablanca to be the same as the rate for Algiers.

(g) If Antwerp or Rotterdam is used, same to be sole port of discharge.

27. FREIGHT PAYMENT CLAUSE:
Full freight shall be deemed earned on the cargo as same is loaded aboard vessel, vessel and/or cargo subsequently lost or not lost. 90% of the freight to be paid by Charterers at New York in U.S. currency per ton of 2240 lbs. on Bill of lading quantity within eight days after the full set of signed original Bills of Lading, excluding one original which is to be placed aboard vessel in consignee's mail, and time sheets in quintuplicate signed by the Captain and shipper's agents in the port have been surrendered to ASSOCIATION TECHNIQUE DE L'IMPORTATION CHARBONNIERE, 44 Beaver Street, New York 4, N.Y. Balance of freight, extra freight, if any, despatch and/or demurrage to be settled in New York as above on presentation of final accounts with vouchers in quintuplicate signed by receivers or their agents and the Captain or Owners or their agents including time sheets at discharging ports.

28. Reference is hereby made to the declaration of trust establishing Eastern Gas & Fuel Associates dated July 18, 1929, a copy of which has been filed with the Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts. The name "Eastern Gas & Fuel Associates" refers to the trustees under said Declaration of Trust as trustees and not personally, and no trustee, shareholder, officer or agent of Eastern Gas & Fuel Associates shall be held to any personal liability in connection with the affairs of said Associates, but the trust estate only is liable.

29. It is understood that the Owners of the vessel (United States and/or Maritime Commission) have the right under Clause #14 of the bareboat charter existing between the Owners of the vessel and Mystic Steamship Division, Eastern Gas & Fuel Associates (Bareboat Charterers) to terminate the period of use of the vessel by giving written notice to the Bareboat Charterers at least 15 days prior to the termination of any voyage. Should the Owners of the vessel exercise this prerogative or any other prerogatives it may have under the bareboat charter existing with Mystic Steamship Division, Eastern Gas & Fuel Associates that might frustrate the performance of this charter, then this charter to be cancelled without penalty or liability on the part of any of the parties hereto. The Bareboat Chartered Owner shall have the option of substituting a similar Liberty steamer in a similar position if this charter is so cancelled.

30. This contract is subject to the approval of the U.S. Maritime Commission.

31. LIGHTERAGE CLAUSE:
If there is insufficient water for vessel to reach her ultimate port of discharge without lightening, Charterers undertake to discharge at one of the below listed lightening ports sufficient cargo, as required by Master, to enable vessel to proceed with safety to port of discharge. All extra expenses incurred thereby, including port charges at lightening port (see Note A below) to be for Charterers' account, and time occupied to count as laytime, excluding steaming time from lightening port to port of discharge. Notice of readiness will be given by Master at lightening port. (see Note B below).

NOTE A: It is understood that the term "extra expenses incurred" appearing in this clause means the difference between the total amount of usual vessel expenses in both ports (i.e., lightening port and ultimate port of discharge), and the amount vessel would have had to pay if discharging full cargo at the ultimate port of discharge. This latter amount to be shown by a proforma disbursement account drawn up by the vessel's agent and certified exact by the Consignee and/or A.T.I.C.

NOTE B: Notice of readiness to discharge is to be given at lightening port. Time to commence twenty-four (24) hours after vessel is ready to unload and written notice of readiness has been given, whether in berth or not. Sundays and holidays to be excepted, unless used, in which case time used for lightening only to count as laytime. Time to stop at departure of vessel from lightening port. If, after completion of discharge of the quantity of cargo necessary in Master's opinion to sufficiently lighten vessel, there is time left while vessel is awaiting favorable tide for sailing, Charterers have the option of discharging additional cargo during such time. Any time lost at lightening port for any reason other than for lightening cargo and/or waiting for tide to be for account of the vessel, unless the vessel is already on demurrage.
Time to be resumed when vessel arrives at ultimate port of discharge, whether in berth or not.
This clause applies to the below listed ports of discharge with respective lightening port, at Charterers' option.

DISCHARGING PORT	LIGHTENING PORT
ROUEN	LE HAVRE, CHERBOURG, BREST (If Cherbourg or Brest, Charterers to declare port of lightening in sufficient time to reach vessel before expected arrival off Cherbourg or Brest).
NANTES	SAINT NAZAIRE
PORT DE BORDEAUX, BLAYE, LE MARQUIS, BASSENS.....	PAULLIAC
PORT DE BOUC, CARONTE	MARSEILLES

Above terms to apply to any other ports where lightening may be required.
All other terms, conditions and exceptions of charterparty are to remain unchanged.

32. French Wireless and Sailing Information clauses attached hereto form a part of this charterparty as though fully incorporated herein.

33. Wherever the word "Owner" appears throughout this charterparty "Bareboat Chartered Owner" to apply.

(i) Clause Paramount:

"This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent but no further."

(ii) Both-To-Blame Collision Clause:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or noncarrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or noncarrying ship or her owners to the owners of said goods and set-off, recouped or recovered by the other or noncarrying ship or her owners as part of their claim against the carrying ship or carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact."

(iii) General Average Clause:

"General average shall be adjusted, stated, and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of York-Antwerp Rules 1924, at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees, or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money, and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the general average and refunds or credit balances, if any, shall be paid in United States money."

(iv) Amended "Jason" Clause:

"In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the carrier is not responsible by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the salving ship or ships belong to strangers."

(v) Liberties Clauses:

"In any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage which in the judgment of the carrier or master is likely to give rise to risk of capture, seizure, detention, damages, delay or disadvantage to or loss of the ship or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to commence or proceed on or continue the voyage or to enter or discharge the goods at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at or leaving the port of discharge or the usual place of discharge in such port, the carrier may before loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the goods at port of shipment and upon their failure to do so, may warehouse the goods at the risk and expense of the goods; or the carrier or master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the goods there, may discharge the goods into depot, lazaretto, craft or other place; or the ship may proceed or return, directly or indirectly, to or stop at any such port or place whatsoever as the master or the carrier may consider safe or advisable under the circumstances, and discharge the goods, or any part thereof, at any such port or place; or the carrier or the master may retain the cargo on board until the return trip or until such time as the carrier or the master thinks advisable and discharge the goods at any place whatsoever as herein provided; or the carrier or the master may discharge and forward the goods by any means at the risk and expense of the goods. The carrier or the master is not required to give notice of discharge of the goods or the forwarding thereof as herein provided. When the goods are discharged from the ship, as herein provided, they shall be at their own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the carrier shall be freed from any further responsibility. For any service rendered to the goods as herein provided the carrier shall be entitled to a reasonable extra compensation.

"The carrier, master and ship shall have liberty to comply with any orders or directions as to loading departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise howsoever given by the government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof, or by any

... to such act to any extent, such term shall be void to that extent but no further."

(ii) Both-To-Blame Collision Clause:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or noncarrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or noncarrying ship or her owners to the owners of said goods and set-off, recouped or recovered by the other or noncarrying ship or her owners as part of their claim against the carrying ship or carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact."

(iii) General Average Clause:

"General average shall be adjusted, stated, and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule 7 of York-Antwerp Rules 1924, at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees, or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money, and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the general average and refunds or credit balances, if any, shall be paid in United States money."

(iv) Amended "Jason" Clause:

"In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the carrier is not responsible by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the salving ship or ships belong to strangers."

(v) Liberties Clauses:

"In any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage which in the judgment of the carrier or master is likely to give rise to risk of capture, seizure, detention, damages, delay or disadvantage to or loss of the ship or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to commence or proceed on or continue the voyage or to enter or discharge the goods at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at or leaving the port of discharge or the usual place of discharge in such port, the carrier may before loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the goods at port of shipment and upon their failure to do so, may warehouse the goods at the risk and expense of the goods; or the carrier or master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the goods there, may discharge the goods into depot, lazaretto, craft or other place; or the ship may proceed or return, directly or indirectly, to or stop at any such port or place whatsoever as the master or the carrier may consider safe or advisable under the circumstances, and discharge the goods, or any part thereof, at any such port or place; or the carrier or the master may retain the cargo on board until the return trip or until such time as the carrier or the master thinks advisable and discharge the goods at any place whatsoever as herein provided; or the carrier or the master may discharge and forward the goods by any means at the risk and expense of the goods. The carrier or the master is not required to give notice of discharge of the goods or the forwarding thereof as herein provided. When the goods are discharged from the ship, as herein provided, they shall be at their own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the carrier shall be freed from any further responsibility. For any service rendered to the goods as herein provided the carrier shall be entitled to a reasonable extra compensation.

"The carrier, master and ship shall have liberty to comply with any orders or directions as to loading departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise howsoever given by the government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or person having, under the terms of the war risk insurance on the ship, the right to give such orders or directions. Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the contract voyage. The ship may carry contraband, explosives, munitions, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

"In addition to all other liberties herein the carrier shall have the right to withhold delivery of, reship to, deposit or discharge the goods at any place whatsoever, surrender or dispose of the goods in accordance with any direction, condition or agreement imposed upon or exacted from the carrier by any government or department thereof or any person purporting to act with the authority of either of them. In any of the above circumstances the goods shall be solely at their risk and expense and all expenses and charges so incurred shall be payable by the owner or consignee thereof and shall be a lien on the goods."

September 11, 1946

The following special provisions to be inserted in all charterparties for vessels carrying Coal and copy of this memorandum to be in the hands of the Captain prior to sailing:

(a) CAPTAIN'S CABLES FOR CARGOES DESTINED TO CONTINENTAL FRANCE:
The Captain is to wireless to TRANSMARITIME PARIS for instructions and send a copy of this wire to ATICHARBON PARIS for information only as soon as possible and in no event later than 72 hours in advance asking for his first discharging port (or for confirmation of his first discharging port if a port has already been nominated to him), and give his expected fore & aft draft upon arrival. Instructions as to port of discharge will be given to him through BORDEAUX PORT RADIO STATION.

When the discharging port is definitely assigned, the Captain will wireless notice of his arrival about 48 hours in advance:

— if bound to North France to: TRANSMARITIME LE HAVRE or TRANSMAR at all other French Atlantic ports.

— if bound to South France to: TRANSMARITIME MARSEILLES whether ship is to discharge at Marseilles, Port Louis du Rhone, Caronte, Toulon, Nice or Sete.

to: TRANSMARITIME SETE if vessel can enter the port of Sete without first lightening in another Southern French port.

(b) CAPTAINS' CABLES FOR CARGOES DESTINED TO NORTH AFRICA AND MOROCCO:

The Captain is to wireless at least 72 hours prior to his arrival at Gibraltar to TRANSMARITIME ALGIERS for instructions and send one copy of this wire to ATICAFRI ALGIERS for their information only asking for instructions for specific port or ports of discharge.

Once the discharging port has been assigned to him, the Captain will wireless notice of his arrival about 48 hours in advance.

to: TRANSMARITIME ALGIERS or
TRANSMAR at all other North African Ports.

(c) SAILING INFORMATION:

On departure of the vessel, the master or his agent is to advise the French Shipping Mission, 1811 R Street, N.W., Washington, D.C., (Cable address "MISMAR WASHINGTON") by telegram or airmail special delivery letter of:

- - - Date of Sailing
- - - Tonnage loaded
- - - Expected date of arrival
- - - expected fore & aft draft on arrival.

In the United States Court of Appeals for the First Circuit

No. 6035

MASSACHUSETTS TRUSTEES OF EASTERN GAS AND FUEL ASSOCIATES, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

APPELLEE'S RECORD APPENDIX

VOLUME I. DOCUMENT 9

[Caption Omitted]

AFFIDAVIT OF LAWRENCE F. LEDEBUR

UNITED STATES OF AMERICA,
District of Columbia, ss:

LAWRENCE F. LEDEBUR, being first duly sworn, deposes and says that:

1. I am an attorney in the Admiralty and Shipping Section of the United States Department of Justice and am familiar with the matters pertaining to the cross-libel filed by the United States in the within proceeding.

2. This affidavit is made in support of the Government's memorandum in opposition to libelant's exceptions and exceptive allegations to the cross-libel.

3. In its reply memorandum, dated July 19, 1961, libelant discusses (Point III, H) the alleged "proper" method of calculating additional charter hire under the Government's theories, and refers to the supplemental affidavit of Robert A. Caswell, which affidavit purports to set forth such "proper" computation in this case.

4. This identical argument was advanced by the charterer in *United States* v. *East Harbor Trading Corporation* (S.D.N.Y. 60 Civil 2362), said charterer being represented by J. Franklin Fort, Esquire, one of libelant's proctors in the instant case. In the *East Harbor* case, the charterer moved for summary judgment on this very point, and the Government introduced the affidavit of Melvin M. Mueller in opposition to said motion. Since the issues are identical, I have appended hereto as Exhibit 1 a true and accurate copy of the affidavit of Melvin M. Mueller as introduced in *East Harbor*. That affidavit completely destroys the contentions advanced by libelant on this "proper" calculation point.

• • • • •

/s/ LAWRENCE F. LEDEBUR.

Subscribed and sworn to before me this 27th day of December 1961.

/s/ AUDREY ANNE CRUMP,

Notary Public in and for the District of Columbia.

[SEAL.]

My commission expires August 31, 1966.

[Note: Exhibit 1 to the above affidavit (affidavit of Melvin M. Mueller in *United States* v. *East Harbor Trading Corporation*) is reproduced in pertinent part immediately below.]

Affidavit of Melvin M. Mueller

United States of America,
District of Columbia, ss:

Melvin M. Mueller, being first duly sworn, deposes and says that:

1. I am a citizen of the United States and a resident of Maryland, presently serving as Supervisory Auditor, Division of Audits, Office of the Comptroller, Maritime Administration, United States Department of Commerce. I have been employed by that agency and its predecessor agencies since August 5, 1942, except for a period of military service from April 1943 to January 1946. From the inception of the program for chartering Government-owned vessels under the Merchant Ship Sales Act of 1946 until approximately December 1950, I reviewed the preliminary statements submitted by the charterers, made analyses thereof, prepared billings for charter hire due the Government, and performed other duties relating to the calculation and collection of charter hire. I also assisted Maritime's field supervisory auditor in the New York area in making several field audits of various charterers. I make this affidavit to the best of my knowledge and belief, based upon my personal knowledge and upon my use and examination of the files of this agency and its predecessor agencies.

2. I have read the second supplemental affidavit of Philip J. Carroll (dated January 19, 1961) which has been filed in support of defendants' motion for summary judgment. Mr. Carroll therein purports to show by certain mathematical computations that the Maritime Administration has overcalculated the total additional charter hire due from defendant East Harbor Trading Corporation under Part II, Clause 13, of bareboat charter contract No. MA-30. This result is reached, according to Mr. Carroll, by adopting the Government's theory that the additional charter hire in excess of the statutory additional charter hire required to be collected under section 709(a) of the Mer-

chant Marine Act, 1936, was charged under authority of section 5(b) of the Merchant Ship Sales Act, 1946, *and* by accounting therefor in compliance with section 709(a). I disagree with Mr. Carroll's basic assumptions and conclusions for, as shown below, the Government has calculated East Harbor's obligation to pay additional charter hire in strict conformity with the requirements of Clause 13, and without violating the requirements of section 709(a).

* * * * *

6. Several fundamental principles are apparent from a reading of section 709(a), section 5(b), and Clause 13 of the charter:

(a) The statutory additional charter hire required to be paid by section 709(a) cannot be *separately* calculated until after profits have been reduced by the contractual (i.e., section 5(b)) charter hire due Maritime in accordance with the terms of the charter.

(b) The charter here fixed contractual (section 5(b)) hire of two types: a fixed monthly hire of $12,237.50, plus a further amount based upon the profits subject to Clause 13.

(c) Since contractual charter hire (i.e., "charter hire reserved in the charter") is an expense to be deducted from profits before calculating the charterer's section 709(a) obligations, it is obvious that for any given amount of *contractual* hire the profits subject to 709(a) are reduced by an amount equal to such contractual hire expense.

(d) The charterer's profits subject to the provisions of charter Clause 13 are therefore to be distributed as follows:

	Government's share:	Charterer's share:
(i)	Contractual (section 5(b)) additional charter hire	
(ii)		Allowable return (10% of investment)
(iii)	50% of remainder (section 709(a)) statutory additional charter hire	
(iv)		Remainder, equal to (iii)

In other words, the Government receives its contractual additional charter hire and one-half of all profits remain-

ing after payment of the charterer's allowable return, while the charterer receives its allowable return and an identical one-half of all profits remaining after payment thereof.

7. Turning now to the actual facts of this case, the following are the figures applicable to defendant East Harbor's liability for charter hire under Clause 13 (see Exhibit B to the affidavit of Philip J. Carroll, dated August 8, 1960):

(a) Profits subject to payment of the statutory and contractual additional charter hire due under charter Clause 13		$64,325.68
(b) Allocation of profits subject to Clause 13 among the three brackets of profit sharing contained in that provision		
(1) Profits not in excess of $100 per day	$13,400.00	
(2) Profits over $100, but not in excess of $300 per day	26,800.00	
(3) Profits in excess of $300 per day	24,125.68	
		$64,325.68
(c) Amount of profits subject to Clause 13 accruing to Maritime per that provision:		
(1) 50% of $13,400.00	$ 6,700.00	
(2) 75% of $26,800.00	20,100.00	
(3) 90% of $24,125.68	21,713.11	
		$48,513.11
(d) Amount of profits subject to Clause 13 accruing to charterer per that provision		$15,812.57
(e) Total profits distributed per Clause 13 ((c) plus (d))		$64,325.68

8. Mr. Carroll does not attack the Government's contention that Clause 13 combined both contractual (section 5(b)) additional charter hire *and* statutory (section 709(a)) additional charter hire (see paragraph 5, *supra*). However, he does assail the computation given above because it computes the total (combined, contractual and statutory) additional charter hire as a single amount ($48,513.11) due the Government and fails to show on its face that the requirements of section 709(a) have been met, i.e., fails to show that the result would have been identical if the contractual (section 5(b)) additional charter hire portion had been deducted from profits before the Government's statutory (section 709(a)) additional charter hire portion was computed.

Although Judge Kaufman has already held Clause 13 valid if it was intended to include both contractual and statutory additional charter hire (and I understand that defendants' present motion proceeds on that assumption), it is nevertheless a simple matter to satisfy Mr. Carroll's curiosity and to show that the $48,513.11 due Maritime as *total* additional charter hire is properly composed of amounts representing contractual (section 5(b)) additional charter hire and statutory (section 709(a)) additional hire, and that the computation of such amounts fully conforms to all statutory requirements. *Whether those amounts are calculated simultaneously as a single product (as was actually done here—see paragraph 7, supra), or whether they are calculated separately as shown below, they are identical.*

9. Thus, as is shown in the following table, the $48,513.11 due the Government under Clause 13 is composed of contractual (section 5(b)) additional charter hire of $32,700.54, and of statutory (section 709(a)) additional charter hire of $15,812.57:

	Net Profit and Additional Charter Hire under Sections 5(b) and 709(a)			§709(a) Profits	§5(b) Additional Charter Hire
	Thru $100 per day	Over $100 Thru $300 per day	Over $300 per day		
Total net profit subject to payment of contractual (§5(b)) and statutory (§709(a)) additional charter hire (see line (b), paragraph 7, *supra*)	$13,400.00	$26,800.60	$24,125.68		
Additional charter hire under sections 5(b) and 709(a):					
50%	6,700.00				
75%		20,100.00			
90%			21,713.11		
Net profits retainable by defendant under §709(a)	6,700.00	6,700.00	2,412.57	15,812.57	
Net profits payable to Maritime under §709(a) (same as line above)	6,700.00	6,700.00	2,412.57	15,812.57	
Net profits payable to Maritime under §5(b):					

Payable under §5(b) & §709(a)

Thru $100	Over $100 Thru $300	Over $300	Total
6,700.00	20,100.00	21,713.11	48,513.11
Less Part Under §709(a)			
6,700.00	6,700.00	2,412.57	15,812.57
0.00	13,400.00	19,300.54	
Grand Total:			$64,325.68

§709(a) Profits	§5(b) Additional Charter Hire
	$32,700.54
$31,625.14	$32,700.54

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Proof that the above computation fully satisfies the requirements of section 709(a) is as follows:

(a) Total profit subject to payment of contractual and statutory additional charter hire	$64,325.68
(b) Less contractural additional charter hire due the Government under §5(b)	−$32,700.54
(c) Remaining profits to be divided equally between the charterer and the Government under §709(a)	$31,625.14
(d) Statutory additional charter hire due the Government under §709(a) (one-half of (c))	$15,812.57
(e) Charterer's share of profits subject to §709(a) (one-half of (c))	$15,812057

It can be seen from the above that the contractual additional charter hire is first deducted from profits as required by section 709(a), and that the remaining balance is then divided equally as required by the same section. There is therefore no validity to the assertion that "proper" computation produces different results from those arrived at when the total additional charter hire is calculated simultaneously (see paragraph 7, *supra*).

10. While the above proof of the Government's compliance with the requirements of section 709(a) are reached by a purely arithmetical procedure, it likewise is possible to show the validity of the Government's computation by simple algebraic substitution, as follows:

• • • • •

Thus, when computed arithmetically and algebraically, the charterer's liability for contractual additional charter hire amounts to $32,700.54, and its liability for statutory additional charter hire amounts to $15,812.50.

• • • • •

12. Any contention by Mr. Carroll that the Government did not follow the proper order required by section 709(a) in calculating the total additional charter hire due under charter Clause 13 is completely answered by the fact that Clause 13 provides for the *simultaneous* determination under both section 5(b) and section 709(a). When a *segre-*

gation between the two types of additional charter hire due under Clause 13 is made merely to test compliance with section 709(a), my calculations, as set out in the preceding paragraphs, show literal and complete compliance with section 709(a) by deducting (1) the basic or "fixed" hire, (2) the remaining contractual (additional charter) hire, and (3) the allowable return, before computing the amount to be divided equally with the charterer under section 709(a). Mr. Carroll's objections have therefore been met in every respect, and there is no validity to the claim that the Government charged East Harbor a total additional charter hire greater than that permitted by Clause 13 if the procedures required by section 709(a) are followed.

13. Mr. Carroll attempts to calculate the Government's entitlement to contractual and statutory additional charter hire on a different and wholly erroneous basis. He correctly reasons that section 709(a) required the Government to collect *statutory* additional charter hire equal to 50 percent of the charterer's excessive profits (after payment of contractual charter hire and the charterer's allowable return), and that any additional charter hire greater than such 50 percent must have been charged as *contractual* additional charter hire under section 5(b). He is therefore correct in his conclusion that all of the profits subject to the first (50%) bracket of Clause 13 were profits subject to section 709(a).

It is with the next step in Mr. Carroll's reasoning that I disagree, for he then concludes that of the profits ($26,800) subject to the second (75%) bracket of Clause 13, 50 percent must have been charged as statutory additional charter hire under section 709(a), and 25 percent as contractual additional charter hire under section 5(b). And he similarly concludes that 50 percent of the profits ($24,125.68) subject to the third (90%) bracket of Clause 13 was charged as statutory additional charter hire under section 709(a), and that 40 percent of such profits was charged as contractual additional charter hire under section 5(b).

On this reasoning (which is in error, as shown in para-

graphs 16-19, *infra*), Mr. Carroll then computes the Government's entitlement to contractual (section 5(b)) additional charter hire as follows:

. . . . . .

Mr. Carroll's conclusion that 25 percent of the second (75%) bracket and 40 percent of the third (90%) bracket represent contractual additional charter hire apparently stems from his uncritical acceptance of language contained in the affidavit of Charles E. Mintzell, dated September 28, 1960, and heretofore filed by plaintiff in this action. For purposes of therein illustrating the fact that the total additional charter hire charged under Clause 13 was a combination of statutory (section 709(a)) and contractual (section 5(b)) additional charter hire, Mr. Mintzell leaped to the same conclusion that is now advanced by Mr. Carroll. However, as Mr. Mintzell explains in a supplemental affidavit, which I understand is to be filed at the same time this affidavit is submitted to the Court, his purpose in making the statements referred to by Mr. Carroll were for illustration only and did not purport to represent the actual segregation of additional charter hire into its component parts. Mr. Mintzell further explains that the figures from which he derived his statement did not themselves segregate additional charter hire into contractual and statutory portions, and that at no time prior to the making of his affidavit was he or anyone else employed by this agency called upon to make such a segregation. With all due respect to Mr. Mintzell, it is obvious that his conclusions (submitted for purposes of illustration only) were in error, just as Mr. Carroll's identical conclusion is in error for the reasons hereinafter set forth.

14. In claiming that 25 percent of the profits in the second (75%) bracket was contractual additional charter hire, Mr. Carroll also claimed that 50 percent of the *remaining* profits in that bracket was statutory additional charter hire. Similarly, in claiming that 40 percent of the profits in the third (90%) bracket was contractual additional

charter hire, Mr. Carroll claimed that 50 percent of the *remaining* profits was statutory additional charter hire. He had already concluded (see paragraph 13, *supra*) that 50 percent of the profits in the first (50%) bracket was statutory additional charter hire. As a result, Mr. Carroll stated that the statutory additional charter hire due the Government was $23,987.70. While he did not show in detail the portions thereof allocable under his theory to each of the three brackets of profits set forth in Clause 13, it is obvious that his views are as follows:

* * * * *

An analysis of Mr. Carroll's figures points up the fundamental error inherent in his thesis, for the result thereof is to rewrite unilaterally the mutually-agreed-upon 50%-75%-90% sliding scale in Clause 13. Thus, according to Mr. Carroll, the profits subject to Clause 13 should have been distributed as follows:

Clause 13 brackets	Maritime's Portions Sec. 5(b)	Sec. 709(a)	Total	Charterer's Portion Under Sec. 709(a)
(i) $13,400.00	$ 0.00	$ 6,700.00(50%)	$ 6,700.00(50%)	$ 6,700.00(50%)
(ii) 26,800.00	6,700.00(25%)	10,050.00(37.5%)	16,750.09(62.5%)	10,050.00(37.5%)
(iii) 24,125.68	9,650.27(40%)	7,237.70(30%)	16,887.97(70%)	7,237.70(30%)
$64,325.68	$16,350.27	$23,987.70	$40,337.97	$23,987.70

In essence, Mr. Carroll is saying that when Clause 13 used the 50% rate as the first bracket in the sliding scale, it was intended that the Government collect 50% of the excess profits, but that when Clause 13 used the 75% rate as the second bracket, it was only intended that the Government collect 62.5% of the excess profits, and that when a 90% rate was used in the third bracket, it was intended that only 70% of the excess profits be collected. *He has changed a 50%-75%-90% scale agreed to by the parties into a 50%-62.5%-70% scale.* Under this type of reasoning, if the Government had wanted to recover 100% of any portion of the profits, it would have had to use a 150% rate.

15. Before explaining exactly *why* Mr. Carroll is in error, I would like to give one more example of the fallacious results produced by his reasoning. As explained in paragraph 13, *supra*, Mr. Carroll's basic premise is that 25 percent of the second (75%) bracket of profits and 40 percent of the third (90%) bracket of profits constitutes the contractual (section 5(b)) additional charter hire due the Government. If this assumption were correct (and I have shown that it is erroneous), the logically correlative assumption would be that 50 percent of such profits (i.e., 75% minus 25% and 90% minus 40%) was due the Government as statutory (section 709(a)) additional charter hire. Under this line of reasoning, the statutory additional charter hire would then be computed as follows:

* * * * * *

Non-existent profits have been distributed!

Of course, this result is absurd, but it is logically produced by the very hypothesis upon which Mr. Carroll proceeds, namely, the mistaken assumption that 25% of the second (75%) bracket and 40% of the third (90%) bracket represents contractual (section 5(b)) additional charter hire.

16. Turning now to the *reason* Mr. Carroll's theory produces illogical and erroneous results, it may first be observed that his (and Mr. Mintzell's initial) impression that

contractual additional charter hire is produced by 25 percent of the second (75%) bracket profits and 40 percent of the third (90%) bracket profits overlooks a basic fact: The 50-75-90 sliding scale of percentages was not inserted into the charter for the purpose of *segregating* contractual (section 5(b)) and statutory (section 709(a)) additional charter hire into two separate portions as Mr. Carroll insists must be done, but was inserted by the Commission when it approved the charter form in August 1946 so that *total* additional charter hire (both contractual and statutory) could be calculated in one operation to produce a single amount due the Government. The Commission was not interested in segregation, but in collection. Since section 709(a) merely required the Commission to collect 50 percent of the charterer's profits after payment of contractual charter hire, and did not impose any limitation upon such contractual charter hire, it is obvious that the Commission had only to ensure that Clause 13 would produce at least such 50 percent of profits. And since Clause 13 specifically granted the Government a share of profits on a 50%-75%-90% sliding scale, it was obvious that section 709(a) would be satisfied. There was therefore no need to segregate the contractual and statutory portions of the total amount accruing to the Government under that provision of the charter. [Consistent with this observation is the fact that neither Maritime nor any of the numerous charterers under the 1946 Act (including East Harbor) ever filed accountings deviating from Clause 13 and segregating the two types of additional charter hire therein produced as a single entity.]

17. What Mr. Carroll overlooked, then, was the fact that the percentages (50%-75%-90%) expressed in Clause 13 were intended to produce only single amounts representing *combined* contractual and statutory additional charter hire due the Government. In attempting to break down and allocate those percentages between contractual and statutory additional charter hire, Mr. Carroll ignored the requirement that his results would have to total the percentages with which he started (the whole equals the sum

of its parts), and he thus converted a 50%-75%-90% sliding scale into a 50%-62.5%-70% scale obviously not expressive of the stated intention of the parties. While such a result might presumably be desired by defendants, it obviously is not indicative of their intentions at the time they executed the charter.

18. All that Clause 13 required was that the Government and the charterer share equally (50% to the United States and 50% to the charterer) the first (50%) bracket of profits, that the Government obtain three-fourths (and the charterer one-fourth) of the second (75%) bracket of profits, and that the Government obtain nine-tenths (and the charterer one-tenth) of the third (90%) bracket of profits.

Since the charterer was entitled only to one-half of the profits subject to equal division under section 709(a), and was not to receive any other profits,[1] it is obvious that the parties considered the charterer's section 709(a) share to be 50 percent of the first (50%) bracket of profits, 25 percent of the second (75%) bracket of profits, and 10 percent of the third (90%) bracket of profits. And, since the Government was required to collect an *equal* amount as statutory additional charter hire under section 709(a), it is just as obvious that such statutory additional charter hire would be 50 percent of the first (50%) bracket, 25 percent of the second (75%) bracket, and 10 percent of the third (90%) bracket. The remainder of the Government's share (0% of the first bracket, 50% of the second bracket, and 80% of the third bracket), then, was the contractual (section 5(b)) additional charter hire. [Note that when a *proper* segregation of total profits is made (see paragraphs 9 and 10, *supra*), the percentages given above are fully complied with.]

19. One final observation might be made: if the 50%-75%-90% sliding scale agreed to by the parties in Clause 13 is disregarded (as has been done by Mr. Carroll), and

---

[1] I have shown that the charterer's allowable return had already been distributed. See paragraph 11, *supra*.

one merely attempts to divide the profits subject to Clause 13 ($64,325.68) so as to satisfy the requirements of section 709(a), an almost infinite number of solutions may be obtained as shown in the following table:

	(a) Profits to be divided per Clause 13	(b) Maritime's contractual ($5(b)) share	(c) Balance subject to division under §709(a)	(d) Maritime's §709(a) share (½ of (c))	(e) Charterer's §709(a) share (½ of (c))
(1)	$64,325.68	$ 0.02	$64,325.66	$32,162.83	$32,162.83
(2)	64,325.68	0.68	64,325.00	32,162.50	32,162.50
(3)	64,325.68	4,325.68	60,000.00	30,000.00	30,000.00
(4)	64,325.68	16,350.27	47,975.41	23,987.70	23,987.70
(5)	64,325.68	32,700.54	31,625.14	15,812.57	15,812.57
(6)	64,325.68	34,325.68	30,000.00	15,000.00	15,000.00
(7)	64,325.68	60,000.00	4,325.68	2,162.84	2,162.84
(8)	64,325.68	64,325.66	0.02	0.01	0.01

However, only one possible solution conforms to the contract requirement of a 50%-75%-90% sharing of profits. It is shown on line (5), above, and is the same solution arrived at both arithmetically and algebraically by me in paragraphs 9 and 10, *supra*.

There was therefore no necessity nor logic in Mr. Carroll's selection of a 50%-62.5%-70% sliding scale; if he was going to ignore the contract, he could have selected almost any other possible combination of percentages as shown above.

/s/ MELVIN M. MUELLER.

Subscribed and sworn to before me this 28th day of February 1961.

/s/ JENNIE W. DIAMOND,

NOTARY PUBLIC. [SEAL.]

My Commission expires September 30, 1964.

VOLUME I. DOCUMENT 12

[Caption Omitted]

STIPULATION

WHEREAS the libel herein of libelant-cross-respondent Massachusetts Trustees of Eastern Gas and Fuel Associates sets forth three separate causes of action and the cross-libel herein of respondent-cross-libelant United States of America sets forth four separate causes of action;

WHEREAS, on January 15, 1962, the Court issued its opinion that the final judgment when entered herein should include the dismissal of libelant-cross-respondent's first and second separate causes of action and the dismissal of respondent-cross-libelant's first separate cause of action;

WHEREAS the said opinion of January 15, 1962, recited that libelant-cross-respondent's third separate cause of action and respondent-cross-libelant's third and fourth separate causes of action should be decided on their merits at a plenary trial to be held thereafter;

WHEREAS the said opinion of January 15, 1962, further recited that respondent-cross-libelant was entitled to recover its damages on its second separate cause of action in an amount thereafter to be determined by further proceedings; and

WHEREAS the parties have settled and compromised libelant-cross-respondent's third separate cause of action and respondent-cross-libelant's third and fourth separate causes of action, and a decree implementing said settlement and compromise is to be entered by the Court herein:

NOW, THEREFORE, it is further stipulated by and between the parties to the above-entitled action as follows:

On the basis of the opinion of the Court entered herein on January 15, 1962, and without prejudice to the right of libelant-cross-respondent Massachusetts Trustees of Eastern Gas and Fuel Associates to seek reconsideration by the District Court of the dismissal of its second separate cause of action or to appeal from any judgment hereafter

entered thereon dismissing its first or second separate causes of action or awarding damages to respondent-cross-libelant on the latter's second separate cause of action, and without prejudice to the right of respondent-cross-libelant United States of America to appeal from any judgment hereafter entered thereon dismissing its first separate cause of action, the total amount of damages of respondent-cross-libelant United States of America recoverable on its second separate cause of action asserted in its cross-libel filed herein on February 15, 1960, shall be Sixty Four Thousand Dollars and No Cents ($64,000.00).

Dated: , 1962.

/s/ JAMES S. EASTHAM,
250 Stuart Street,
Boston, Massachusetts.

/s/ J. FRANKLIN FORT,
529 Tower Building,
Washington 5, D. C.
Proctors for Libelant-
Cross-Respondent.

/s/ DANIEL B. BICKFORD,
for W. ARTHUR GARRITY, JR.
United States Attorney.

/s/ LAWRENCE F. LEDEBUR,
Attorney, Admiralty & Shipping
Section, Department of Justice
Washington 25, D. C.
Proctors for Respondent-
Cross-Libelant.

SUPPLEMENT TO RECORD ON APPEAL CERTIFIED ON AUGUST 9, 1962.

[Affidavit of Charlie H. McDaniel]

[Caption omitted]

AFFIDAVIT OF CHARLIE H. MCDANIEL

UNITED STATES OF AMERICA,
District of Columbia, ss.

CHARLIE H. MCDANIEL, being first duly sworn, deposes and says that:

1. I am a citizen of the United States and a resident of the District of Columbia, presently serving as Chief, Division of Subsidy Contracts, Office of Government Aid, Maritime Administration, United States Department of Commerce. I have been employed by this agency and its predecessor agencies since January 2, 1919, except for three months in 1920 and nine months in 1932-33. I have specific and detailed personal knowledge of the facts underlying the adoption of the provisions concerning charter hire contained in the Form No. 303, SHIPSALESDEMISE bareboat charter (herein called "Form 303 charter"), which applied to warbuilt, dry-cargo vessels chartered under the Merchants Ship Sales Act of March 8, 1946, 60 Stat. 41, as amended, 50 U.S.C. App. 1735 *et seq.* (herein called the "1946 Act").

2. My knowledge of the facts was acquired from my service on both of two intra-agency committees which considered the fixing of charter hire under section 5 of the 1946 Act. I make this affidavit to the best of my knowledge and belief, based on my personal knowledge of the facts, both from personal experience and from my continued use and examination for many years of the files of this agency and its predecessor agencies.

3. The aforementioned committees began their deliberations after extensive hearings and debates had been held

by Congress on several ship sales bills, at which consideration had been given to the "Harvard Report" (House Merchant Marine Com. Doc. No. 48), June 1945, by the Harvard Graduate School of Business Administration, on "The Use and Disposition of Ships and Shipyards at the End of World War II," 325 pp. (S. Rep. No. 807, 79th Cong.).

4. The summary of recommendations contained in the Harvard Report made it clear that the basic policy recommended was with reference to the *sale* of ships. With respect to chartering, recommendation 2 of the Harvard Report (p. 3) proposed the following:

> (1) Some ships should be made available on a charter (lease) basis to both domestic and foreign operators who need ships temporarily until ships suited to their requirements can be built.
>
> (2) Liberty ships and ships over 15 years old should be made available for charter as soon as for sale. Other type ships should not be chartered until they have been offered for sale to all classes of purchasers and have not been sold.
>
> (3) *The charter price should be sufficiently high, as compared with the sales price, so that long-term chartering is discouraged.*
>
> (4) The charter period should not be less than one (1) year. [Emphasis supplied.]

The report, however, made it clear (p. 150) that, in general, chartering should be avoided:

> We feel that private operators who have invested their own capital in ships will render the best service to the country both for economic and security purposes. Chartering, however, by making it easier for operators to participate in the shipping business on a short-term basis with a smaller capital investment than is required if ships are purchased, would tend to lead some private operators to prefer short-run, low-capital operations.

* * * * *

> Since sales are preferable to charter, no ship should be chartered if there are purchasers available. • • •
>
> In order to prevent Government-owned ships from being used to meet purely seasonal demands and from exerting unfavorable pressure on ship markets, no charter should be for less than 12 months.

5. Reports of the congressional committees which considered the bill eventually enacted as the Merchant Ship Sales Act of 1946 clearly stated that the intent of the bill was to *dispose* of the Government-owned fleet. For example, H.R. Rep. No. 831, 79th Cong., 1st Sess. (1945), stated that the temporary chartering authority was to permit *re-establishing a trade or opening a new trade*. Similarly, S. Rep. No. 807, 79th Cong., 1st Sess. (1945), gave as the two objectives of the bill (1) a firm pricing policy for the *sale* of ships and (2) establishment of an inactive reserve "frozen so far as commercial use is concerned." That report considered Maritime's authority to charter as "necessarily a discretionary one to meet uncertainties particularly during the period of reconversion to peacetime operation • • •." And H.R. Rep. No. 1526, 79th Cong., 2d Sess. (1946) (conference report), stated that the conference bill did not include a Senate amendment forbidding Maritime from rejecting a charter application in order to deny operation of any kind or to restrict competition,

> • • • inasmuch as the discretion placed in the Commission by the section as to chartering will be governed by the declaration of policy and other provisions of the bill.

The congressional debates prior to passage of the 1946 Act similarly show the objective of sales, the dislike of chartering and the broad discretion lodged in Maritime.

6. Section 5(b) of the 1946 Act provided as follows:

> The charter hire for any vessel chartered under the provisions of this section shall be fixed by the Commission as such rate as the Commission determines to be

consistent with the policies of this Act, but, except upon the affirmative vote of not less than four members of the Commission, such rate shall not be less than 15 per centum per annum of the statutory sales price (computed as of the date of charter). Except in the case of vessels having passenger accommodations for not less than eighty passengers, rates of charter hire fixed by the Commission on any war-built vessel which differ from the rate specified in this subsection shall not be less than the prevailing world market charter rates for similar vessels for similar use as determined by the Commission.

It should be noted that at no time did the Maritime Commission by a vote of at least four commissioners approve a rate of charter hire less than 15 percentum per annum of the statutory sales price on dry-cargo vessels in foreign service operation. And section 709(a) of the 1936 Act (incorporated by reference into section 5(c) of the 1946 Act) provided:

> Every charter made by the Commission pursuant to the provisions of this title shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumulative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charterer's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall exceed 10 per centum per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Commission, as additional charter hire, one half of such cumulative net voyage profit in excess of 10 per centum per annum: *Provided*, That the cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

7. The members of these two committees on which I served considered that, without the 50 percent provision for

additional charter hire in section 709(a) of the 1936 Act being incorporated into the 1946 Act, Maritime would have had full discretion under section 5(b) of the 1946 Act to fix hire by use of a fixed or firm basic hire plus a sliding scale of profit sharing additional hire or additional hire of any percent, as had been frequently done by the War Shipping Administration in Public Law 101 charters where the statutory requirement was only that the charter hire be fair and reasonable and the terms desirable for protection of the public interest. Some WSA charters themselves had a scale of additional charter hire which slid from 50 percent to 100 percent for failure to fulfill ship purchase commitments. No reason therefore appeared to the committees of which I was a member why the statutory additional charter hire of 50 percent in section 709(a) should limit Maritime's discretion to include further elements of profit sharing hire in fixing a contractual rate of hire under section 5(b), as long as the 50 percent statutory additional charter hire was also collected.

8. The first committee of seven, appointed May 31, 1946, included as a member Maritime's Assistant General Counsel Francis B. Goertner, and the second committee of eight, which began operating on August 1, 1946, had Maritime's General Counsel Wade H. Skinner, now deceased, as a member. At no time during the deliberations of the two committees, or in the Maritime Commission meetings, or previous thereto, was any legal view expressed, to my knowledge, by either Mr. Goertner or Mr. Skinner, or any other attorney with Maritime, to the effect that, apart from the question of meeting the world market rate and the 50 percent statutory additional hire set forth in section 709(a) of the 1936 Act, it would be unlawful to provide by contract for additional elements of profit sharing or "additional charter hire" at higher amounts. On the contrary, as appears more fully hereafter, General Counsel Skinner specifically approved of the "sliding scale" provision of the Form 303 charter which maintained the 50 percent rate required by statute but added additional contractual amounts.

9. In their deliberations, these two committees had the benefit of WSA's experience in chartering war-built vessels under Public Law 101. One mistake of fact affected the early thinking of those WSA officials who developed the rate used in the WSA interim charters of war-built vessels. That was the impression that British rates were lower, and that high charter rates to American placed the latter at a competitive disadvantage. The committees on which I served began to realize that the United States, having control of the great bulk of world tonnage, also controlled the world market, and that too low charter rates would permit undercutting on freight rates with extremely harmful results to pre-war American owners and post-war American vessel purchasers who were trying to establish themselves.

Large shipowners early warned WSA against promiscuous chartering in competition with owners without a determination of necessity for "the development and maintenance of the commerce of the United States and the national defense." To do so, it was said, would encourage indefinite postponement of the risks of purchasing, especially if the right of termination on very short notice were given.

In sum, the files confirm my personal knowledge that WSA interim chartering had demonstrated that the rates under those charters were too low if the American pre-war owners and post-war prospective purchasers were to be protected from freight undercutting by charterers contrary to the policies of the 1946 Act to foster a *privately-owned* American merchant marine. The files also make clear the early assumption by all of us who were concerned, that charters under the 1946 Act would be long-term charters.

10. The Acting Director, Division of Vessel Disposal and Government Aids, on May 20, 1946, proposed to the Commission a charter period of from one to five years "on the grounds that the one-year period would discourage speculative chartering, and that five years is the maximum which can justifiably be planned for."

11. A proposed draft of General Order 60, circulated on April 10, 1946, had contained a provision for a charter term of one year. But even that early it was proposed that such

a definite provision be eliminated because of the developing need for relief movements and for tiding over redeliveries of owned vessels. While the opinion was expressed that the legitimate charterer should not be unnecessarily handicapped, it was stated that:

> The charter policy to be adopted by the Commission should eliminate much speculative chartering and chartering in lieu of sales.

And the statement was made that some of the industry was counting on the world market rate provision for protection against such chartering.

12. On July 16, 1946, realizing that the rate of hire under temporary (i.e., less than one year) charters should be higher than under long-range charters, I addressed a written proposal to the Chairman of the Committee on Chartering Policy that, in the case of temporary charters, General Order 60 be amended to require additional charter hire of 66⅔ percent.

Three days later, on July 19, 1946, our committee addressed a memorandum to the Commission pointing out that the needs for UNRRA and relief cargo would far exceed available private tonnage, and that the machinery set up for chartering in General Order 60 was designed for long-term charters of a year or more only, and not for short-term charters which must be consummated on short notice.

On July 23, 1946, I addressed a separate memorandum to the Commission (which was presented to the Commission attached to the July 19 memorandum) recommending basic hire of 15 percent of the statutory sales price and 66⅔ percent of additional hire for temporary charters.

13. The Commission considered this matter on July 25, 1946, and indicated that, instead of the contract adding to the 50 percent statutory additional charter hire, under the temporary charters,

> • • • any change should be made in the base rate of charters which appear too low.

This decision of the Commission, however, was not predicated upon any belief that it lacked authority under section 5(b) to add increased amounts of profit sharing or "additional charter hire" to that required by section 709(a), and the committee was told to continue its deliberations on charter rates.

At 5:00 P.M. of the same day, our committee reported difficulties in deciding upon the proper rates. The Commission decided, therefore, to continue the WSA charters to September 1, 1946, when the Commission charters would begin "at rates to be fixed by the Commission."

In a memorandum of July 29, 1946, summarizing the actions taken on July 25, Commissioner Carmody states that, while profit sharing or additional hire of 66⅔ percent had been disapproved, there was a "common recognition that basic bareboat charter rate was too low," and the Commission requested a definite committee recommendation of base rates that "would be more nearly in line with the world charter rates * * *."

14. Finally, on July 29, 1946, just two days before our first chartering committee was to be dissolved, it processed a memorandum to the Commission requesting an opportunity to argue orally in favor of a rate of 15 percent of the unadjusted statutory sales price or the floor, as fixed or firm hire, plus contractual profit sharing or additional charter hire of 66⅔ percent of net profits adjusted, as giving

> * * * the maximum effectiveness in its program of transition from Government to private operation with the maximum recovery of hire consistent therewith.

Our memorandum stated that the method proposed must, of course, be approved by the General Counsel as consistent with the provisions of law.

Our first committee attached to that memorandum a separate memorandum of the same date in which it reported that, after the committee had "studied the world charter market," it adopted the proposal for rates of hire

based on 15 percent of the higher of the unadjusted statutory sales price or floor for the domestic trades, and firm rates including 21.7 percent for Liberties, and 17.3 percent for C-B's for foreign trade, which rates were considerably above the WSA basic rate.

15. While both our memorandums of July 29, 1946 were presented to the Commission, the one recommending 66⅔ percent additional hire was designated a revision of the other. And the Commission minutes of July 31, 1946 show that, in discussion, the committee chairman stated that the committee favored fixed or firm hire of 15 percent, plus profit sharing or additional hire of "66⅔ percent of the net profits adjusted."

The memorandum suggesting 21.7 percent for Liberties was submitted because the Commission, on July 25, 1946, had ordered the committee to develop a high firm rate of hire, instead of profit sharing additional hire in addition to the 50 percent required by statute. But the committee, knowing the difficulties implicit in such a determination, considered an increase in the profit sharing or additional hire to be the fairer method because, coming out of any profits, it involved less risk to the charterers and was more adaptable to the fluctuations of world market rates.

16. The most significant aspect of the July 31, 1946 meeting of the Commission was that it was thereat that a "sliding scale" of contractual profit sharing or additional charter hire, in addition to that required by statute, was first formally proposed to the Commission. The minutes show that committee member Dudley B. Donald, then Acting Chief of the Chartering Section, and in charge of both WSA and Commission chartering activities, proposed the same fixed or base hire as that in the July 29 memorandum, with the statutory additional hire of 50 percent and recapture of profits after "a limitation of $200 per day profit, with an increased percentage based on amounts above that figure."

17. On August 1, 1946, a new Special Charter Committee was appointed to further study and report on the whole problem of charters. While there were several new mem-

bers, including General Counsel Wade H. Skinner, both Mr. Donald and I, among others, were reappointed. The chairman of the committee, Mr. R. S. McKeough, was also a member of the Commission.

As above indicated, our prior committee had been studying the world market rate. Data were collected to be used in relating world market time charter rates to bareboat rates, the former including operating costs. Statements were compiled by or for committee members, giving the estimated daily operating costs of various types of vessels. Tables were compiled of the statutory sales prices of the several types as compared with the 15 percent in the WSA charter.

18. About August 1, 1946 our committee considered as possibilities rates similar to the Donald proposal at the July 31 Commission meeting. Consideration was given to a fixed or basic hire of 15 percent plus 50 percent statutory additional charter hire (as provided in section 709(a)).

> * * * provided that should the overall profits after "basic" and "additional charter hire" exceed 20% per annum on capital necessarily employed in the business, said excess profits shall be paid to the Commission as further additional charter hire.

Separate drafts of two other variations of the same general method of computing the total contractual hire were also considered about August 2, namely, 15 percent firm or basic and 50 percent statutory additional hire:

> (1) provided that, in the event the total profits accruing to the owner, after "basic" and "additional" hire exceed 20% per annum of the capital necessarily employed in the business, 80% of said excess profits shall be paid to the Maritime Commission.
>
> or
>
> (2) provided that the charterer's overall profit, if any (after payment of "basic" and "additional" charter hire), in excess of 20% of capital necessarily employed

in the business, as determined by the Commission, shall be paid to the Maritime Commission.

Additionally, pencilled notes of committee members show calculations of additional hire at various sliding scales which were considered, and that the several methods were being presented to the General Counsel for his consideration of their legality in the light of the provisions of section 5 of the 1946 Act and section 709 of the 1936 Act.

19. A conference was held by our special committee about August 5, 1946 with various representatives of the American shipping industry, at which time the question of appropriate rates of hire was discussed. Notes of that conference show that the representative of United States Lines stated the WSA chartering had resulted in unanticipated excessive profits and that charter rates must be increased in order to foster sales. An official of Waterman Steamship Company pointed out the need for using the world market rates.

A note in the files by one committee member states that the proposal to increase the hire

> • • • is based on the premise of making the charter operations the least attractive and private ownership the better proposition.

In sum, there is no slightest doubt that all members of our committee realized fully at all times that the WSA rate of hire was too low and that there had to be an increase. They realized also, as was urged by the industry, that the 1946 Act required chartering to be on a basis which would foster vessel ownership and stimulate sales, and that this also required use of the world market rate. The committee did not consider it entirely clear whether the 1946 Act expressly prohibited the use of a 15 percent rate, mentioned in section 5(b), if the world market rate was, say 30 percent. It was reasoned, however, that the Commission would in any event be precluded from ever using the 15 percent rate when the

world market rate was, say, 30 percent, because of the requirement in section 5(b) that the total contractual rate of hire be "consistent with the policies of this [1946] Act," it being clearly inconsistent with the fostering of vessel ownership and the promotion of vessel sales to charter at a rate so low as to depress a higher world market and thus to cause owners to suffer and prospective owners to be deterred from buying, but enabling charterers to undercut the going rate.

20. The disagreement in the committee was over the *method* of effecting increased total contractual hire—whether it was preferable to have higher firm or basic hire, which imposed much greater risks of loss on the charterers, or whether it was fairer to lessen the risk by a smaller rate of high firm hire and a greater split of the excess profits. Our committee files leave no doubt that, in effectuating the policies of the 1946 Act, the firm-hire would have been set considerably higher if amounts of contractual profit sharing or "additional hire" had not been added to the 50 percent required by statute.

21. On August 8, 1946, four members of our Special Charter Committee (one not reporting) made their report to the Commission recommending, after intensive study of the world market situation and the reaction of the industry, a firm or basic hire of 15 percent of the higher of the unadjusted statutory sales price or the floor, and a total profit sharing or additional charter hire of 90 percent of net voyage profits in excess of 10 percent of capital necessarily employed. The period was to be six months, with the right to 15-day cancellation by either party. The report and recommendation were signed by four members, including General Counsel Skinner, Commissioner McKeough and myself. It reported interviewing a cross section of the charterers involved. Regarding world market rates, the memorandum stated:

> The freight rates are high, very much higher than before the War.

It further stated:

> Generally, the basic charter rate of 15% of the sales price is below the world market charter rate and, therefore, is not consistent with the policies of the Merchant Ship Sales Act, 1946.

With the exception of one member, the committee believed it

> * * * would not be practicable at this stage of interim chartering to increase basic rates to what would appear to be the world market rates. As interim chartering has arisen from an emergency condition, we believe that the most practical way, under the circumstances, to achieve our major objective (more equitable charter hire and to reduce excessive charter profits to the charterer) would be to increase the present 50-50 division of the profits over 10% per annum of the capital necessarily employed in the business * * *

All committee members except one were reported as agreeing that the statutory 50 percent of profit sharing should be added to, with a minority favoring a total of less than 90 percent. The majority believed that redeliveries from such increased hire would be absorbed by increased sales, and by other charterers, berth operators and general agents.

22. Acting Chief Dudley B. Donald, Charter Section, by a separate memorandum of August 7, 1946, concurred in by C. G. Cornwell, recommended the same period, cancellation notice, and "initial" basic hire as the majority, but recommended additional profit sharing hire consisting of:

> (a) 50 percent of net voyage profit up to the first $200 per day above 10 percent of capital necessarily employed, and
>
> (b) 90 percent of the excess over such $200 net voyage profit per day.

23. A third memorandum, dated August 6, 1946, stated the dissent of committee member Paul A. Sullivan, of the Operations Branch. He favored raising the firm hire rather than adding more profit sharing or additional hire. It was his position that section 5(b) permitted only a firm contractual rate of hire. "The Commission had first to fix the charter hire at such rate as the Commission determines to be consistent with the policies of the Act and then in Subsection (c) specifically provides that Section 709, 1936 Act shall apply." Mr. Sullivan, who was also not a lawyer, reasoned that, under the policy of the Act for private ownership, compliance with which is required by section 5(b), the firm hire should be set at a rate which gives the charterer no advantage over an owner, and

> it seems that the rates should conform to the prevailing world market charter rates adjusted to meet the special conditions of the Maritime Commission * * *.

He criticized the 90 percent profit sharing or additional hire proposed by four committee members, stating that it

> * * * may result in the payment of full charter hire less than the prevailing world market rates.

He set forth a formula for adjusting the prevailing world market time charter rates to produce basic bareboat rates thus:

World market T/c rates—Liberty	$4.50 d.w.t. mo.
Owner's expense	2.10
Comparable bareboat rate	2.40
Three-fourths of world market bareboat rate	1.40

His recommendation was for firm basic hire of $1.80 d.w.t. mo., or a rate equal to three-fourths of the world market bareboat rate. [$1.80 d.w.t. mo. is the equivalent of 34.2 percent, as compared with 15 percent (74¢ d.w.t. mo.) of the unadjusted statutory sales price or the floor price, and $2.40 is the equivalent of 45.6 percent.]

He favored the six-month term, but strongly advocated elimination of the 15-day termination right except by the Government in case of sale or default.

> The delay and expense involved in the taking of inventories and surveys at the end of each voyage which could happen with the option of termination on 15 days' notice in my opinion is not warranted.

24. My committee files contain my "Comments on Mr. Sullivan's Proposal-Interim Chartering." I stated that Mr. Sullivan seemed to contemplate that the one-fourth of the estimated world market rate would be offset by the 50 percent additional charter hire "which is an assumption and highly speculative." I added:

> If Mr. Sullivan's theory to the effect that the law requires the Commission to charge the world market rate is right, then he has violated his own theory by charging only 75% thereof, because the specific provision in the law that mentions world market values is by no stretch of the imagination tied to the additional charter hire provision which is in another subsection of the law.

Even taking Mr. Sullivan's assumption of 30 cents additional hire, I stated that the total hire, including additional hire, would be $1.80 plus .30, or $2.10, and would fail to produce the world market rate of $2.40. I concluded my comments thus:

> In brief, his proposal does not even attempt to establish world market rates for the basic charter hire. In other words, he does not remove our one deficiency, that is, our failure to use world market rates as our basic charter rates, and, at the same time, he would leave us with the tremendous task of fixing new basic rates on every charter without the time or facilities adequate to do the job.

It should be noted that Mr. Sullivan did not view an addition to the statutory 50 percent additional hire as a viola-

tion of section 709(a) except insofar as such increase might still fail to result in collection of the world market rate.

25. The foregoing memorandums were thoroughly considered by the Commission at its meeting on August 9, 1946, at which the General Counsel and affiant, among others, were present. Everyone was in accord that the 15 percent firm hire had to be substantially increased, but there was a variety of views as to the method of effecting the increase in total hire.

Commissioner McKeough pointed out that the Committee was endeavoring.

> • • • to correct a situation where charterers with a low capital investment would earn exceptionally high profits.

The Commission Chairman was opposed to 90 percent additional hire as imposing too great risks on the charters. Commissioner Parkhurst suggested a compromise between the proposed 66⅔ percent and 90 percent total additional hire.

Committee member Darr, who had filed no report, proposed, with the concurrence of Messrs. Sullivan and Cornwell, a compromise between the majority and minority reports as follows:

50% ..... first $150 per day.
75% ..... next $150 per day.
90% ..... excess over such $300 per day.

Commissioner McKeough offered for the majority the following compromise:

50% ..... first $150 per day.
90% ..... excess over $150 per day.

Commissioner Mellen then proposed:

50% ..... up to first $100 per day.
75% ..... next $200 per day.
90% ..... excess over such $300 per day.

The Commission thereupon approved the majority report of August 8, 1946, with the last mentioned modifications proposed by Commissioner Mellen. This is the sliding scale, consisting of contractual additions to the statutory 50 percent additional charter hire of which Eastern Gas complains.

26. By telegram of August 12, 1946, the industry was notified of such action, including the sliding scale of additional hire. And opportunity was given to the industry to be heard on the above.

The Subcommittee of the Committee of Whole (representing the American Merchant Marine Institute, Inc., the Association of American Shipowners, the Pacific Steamship Association and the Shipowners Association of the Pacific Coast) proposed that (1) 50 percent additional hire should apply to chartered vessels in a number equal to the number of 1946 Act purchase applications made, "with such guarantees as the Commission may deem advisable," and (2) progressive reduction in chartered vessels with 50 percent additional charter hire as each owned vessel is supplied.

My memorandum of August 21, 1946, for the committee files, commented upon that proposal. I therein stated:

> [that the members of the subcommittee point out that the law provides for 50 per cent additional hire but] fail to emphasize the fact that the law also implies, at least, that the *basic charter* hire *shall* be equal to the world market rate. It was generally conceded in the Special Committee's deliberations that the bareboat world market rate, generally speaking, was at least twice the basic rate of 15% of statutory sales price.
>
> . . . . .
>
> Therefore, if the owner is going to ask for the minimum recapture of 50% of profits in excess of 10% of capital necessarily employed; *then it would seem that the Commission should by all means increase the basic charter rate to the recognized world market bareboat rate.* The

> charterer is in better position on a low basic charter [hire] and a high recapture [additional hire] than he would be if the position were reversed because in the first instance a more liberal portion of the overall charter hire is payable out of profits, if earned, whereas, in the second instance, a much greater charter hire would be paid whether there were *any* profits or not. [Emphasis in original memorandum.]

I concluded my comments with the statement that it would not be "equitable or in the public interest" to make the changes proposed.

27. On August 23, 1946, the Commission denied the position of the Committee of the Whole. Meanwhile, Mr. Donald, as Acting Chief, Chartering Section, made a report and detailed recommendation as to various charter matters, in which he stated that:

> Practically all bareboat charterers [60 in number] have accepted the conditions of the Maritime Commission form of charter *outlined* in the MC-WSA telegram sent to them on August 12. Although some have protested, no charterer has refused to accept the recapture provisions for additional charter hire [sliding scale].

And on September 4, 1946, the Commission approved the Form 303 charter. At no time prior or subsequent thereto did the General Counsel or any other member of the staff question the legality of such charter or the legality of Clause 13 thereof which called for a sliding scale of additional charter hire composed of the statutory amount of 50 percent plus contractual additions if profits were exorbitant.

28. On numerous occasions thereafter commencing on October 15, 1946, Maritime reported fully to Congress in its quarterly and annual reports, as required by section 13 of the 1946 Act, on both the terms and effect of the sliding scale provisions for profit sharing or additional charter hire contained in Clause 13 of the charter, detailing the percentages in the sliding scale and how it was applied.

Thereafter, in early 1947, the Committee on Chartering Policy again reviewed the charter rates, recommending to the Commission that short term charters be concluded and that charters be made for a minimum of 13 months, with a firm basic charter hire of 25 percent (in lieu of the 15 percent in the Form 303 charter), and with additional charter hire at the statutory 50 percent (in lieu of the sliding scale contained in the Form 303 charter). This recommendation was made to the Commission solely because it was felt that the Form 303 charter was not discouraging chartering and encouraging sales, as required by the policy of the Act, and not because there was then or at any later time any question as to the legality of adding additional contractual amounts of profit sharing to the statutory 50 percent so as to form a sliding scale.

29. Numerous objections to this plan for higher firm hire were received from the industry, including those members then possessing and operating vessels under the Form 303 charter. For example, the St. Lawrence Navigation Company, Inc., by a telegram of April 7, 1947, stated that it was prepared to apply for a Form 303 charter (with sliding scale), but would not change to the proposed long-range charter because it

> • • • greatly increases charterer's risk. At the same time protection of ship cancellation is removed.

The American Tramp Shipowners opposed the proposed program and concluded it best for the Commission to continue the Form 303 charter. Similarly, Ship Operators Association, Inc. felt that it was not an opportune moment to negotiate a long-range charter program, and recommended that the present charters (Form 303 with sliding scale) continue. Other charterers expressed a similar desire that no change in the chartering program be effected at that time.

After considering all of the industry objections to a change, the Commission decided against such change for the time being at its April 17, 1947 meeting.

30. In its report to Congress for the quarter ending June 30, 1947, the Commission again reported in full detail on the sliding scale provisions for amounts of profit sharing or additional charter hire in addition to the statutory 50 percent. It reported also that action on its proposal for 25 percent basic and 50 percent statutory additional hire and a minimum period of 13 months had been deferred in view of "the many objections raised against the proposed change" and the uncertain conditions of world shipping.

In April, May and June 1947, extensive congressional hearings were held by the Weichel House Subcommittee (726 pp.) on the question of extending the 1946 Act authorities, including the authority to charter. The Commission Chairman (p. 170) explained that the Form 303 charter provided for additional hire covering "most of the profits," and, in response to a direct question from the subcommittee chairman, fully detailed (pp. 176-177) the 50-75-90 percent sliding scale of additional hire in the charter.

It was during these hearings that Congressmen Keogh and Bonner, in questioning Commissioner Mellen, brought out that charterers were not paying the world market rate of charter hire which the Commission was required to charge by the 1946 Act. Testimony for the industry fully acquainted the subcommittee with the nature of the contractual additions to the statutory 50 percent profit sharing resulting from the sliding scale provisions of the Form 303 charter and with the financial results of their operations thereunder. At no time during the hearings did any of the subcommittee members or the witnesses argue that such sliding scale of additions to the 50 percent statutory amount was illegal.

Indeed, S. Rep. No. 392, 80th Cong., 1st Sess. (June 26, 1947), and H.R. Rep. No. 725, 80th Cong., 1st Sess. (June 27, 1947) reluctantly granted an extension of the Commission's chartering authority because it was believed that continuance thereof had

> • • • militated against the accomplishment of the objectives of the [1946] Act of selling war-built merchant

ships and of building for the future a privately operated American merchant marine.

The reports both state:

> • • • this extension has been granted with the understanding that the basic rates for the charter of dry-cargo vessels and recapture [additional hire] rates will be immediately increased, thus encouraging the purchase rather than charter of these ships.

Public Law 127, 80th Cong., approved the day following issuance of these two congressional reports, extended the Commission's chartering authority from December 31, 1947 (the original termination date) to March 1, 1948.

31. On July 10, 1947, following issuance of the congressional reports directing an increase both in the basic rates and in the contractual sliding scale of additional charter hire, Commissioner Mellen proposed increasing the basic rate to 25 percent with 50 percent additional hire. That suggestion was repeated at the July 15, 1947, Commission meeting. The next day (July 16, 1947) the New York Journal of Commerce (p. 24, vol. 3) reported that discussion in an article by Oscar E. Naumann, which also stated that the cancellation clause would be eliminated and the term would be August 1, 1947, to February 1, 1948. Commissioners were reported as stating that the increase in basic hire from 15 to 25 percent should be offset by the reduction in additional hire, and should make for greater efficiency. The article then concluded that *the increase in basic rates "jibes" with the recommendations in the House Committee reports, but the committee also stated that "recapture [additional hire] rates will be immediately increased."* [Emphasis supplied.]

The same day, Isbrandtsen Company, Inc., wrote, commenting on the article to the effect that favorable employment of ships had been a "foregone conclusion" in the past periods but that the then-existing world market did not favor a tightening of terms.

The Commission's 1947 Annual Report to Congress for fiscal year ending June 30, 1947, noted the increase from 471 under the WSA charter on June 30, 1946, and 734 on August 31, 1946 (when the Form 303 charter began), to 1,510 on June 30, 1947. It stated that most of the 1,510 vessels under charter on June 30, 1947, were carrying relief cargo. *The report set forth in detail the provisions of the 50-75-90 percent sliding scale of additional hire in the charters,* and stated that new charters proposed at higher basic hire and 50 percent additional hire had been proposed.

32. Overtonnage of the market then began to be seriously felt. On July 18, 1947, the American Tramp Shipowners Institute opposed any charter hire increase because of a serious decline in available cargoes and resulting freight drop to a point where operations were not profitable.

Four days later (July 22, 1947), Marine Transport Lines, Inc. telegraphed that it had planned to purchase ten ships of which only four had been acquired to date. It stated:

> View demoralized condition freight market due to overtonnaging under bareboat charters, find it necessary defer further purchases dry cargo ships indefinitely. Under present situation privately owned American ships unable secure cargoes while some bareboat chartered vessels are taking cargoes at definite losses. Consider imperative that immediate steps be taken by Commission to prevent further deliveries under bareboat charter and that existing bareboat chartered fleet be reduced twenty-five percent by Commission promptly withdrawing such percentage from each charterer.

On July 30, 1947, Marine Transport was advised by letter that all district directors were instructed on July 23 to make no further deliveries of vessels allocated for charter *except for berth service* to meet prior commitments at not less than break-even rates, and that allocations for charter had been stopped. The Commission was reported to be

actively considering corrective measures to relieve the situation.

On July 23, 1947, the Ship Operators Association, Inc., telegraphed that it viewed with alarm:

> • • • current demoralized freight conditions • • • brought about by keen and destructive competition between bareboat charterers at a time when insufficient employment for the American bareboat fleet exists.

The telegram stated that the situation was urgent because of idleness or operation at less than cost.

At the July 24, 1947, Commission meeting, it was considered whether too many vessels were under charter and whether there should not be a ceiling on the number.

On July 24, 1947, the National Federation of American Shipping, Inc. (of which the American Merchant Marine Institute, to which Eastern Gas belonged, was a member) wrote that there were:

> • • • disturbed conditions in the charter market due to overtonnage.

The letter urged that chartering:

> • • • should be reduced to the very minimum until this situation can be thoroughly analyzed and a definite forward policy adopted.

On July 25, 1947, the Association of American Ship Owners recommended ceasing deliveries, even though fixtures were available at break-even rates, because additional tonnage was not needed. It also recommended reports of activities as brokers or agents for foreigners.

On July 29, 1947, the Commission modified its field instructions to the effect that—

(1) Deliveries would be made for bulk trade only if rates not less than break-even or essential to protect the charterer.

(2) Deliveries for berth operation would be made only

if the operator guaranteed it would not withdraw its owned vessels from berth for bulk operation.

(3) Deliveries to berth operators for bulk service would be made only where there was a prior commitment at not less than break-even rates.

(4) No deliveries for future commitments nor allocations for charter would be made at the time.

By letter of July 30, 1947, States Marine Corporation, which held April 22, 1947, A.T.I.C. subcharters for 15 vessels for one year from tender at *50 cents* under the WSA published rate, as compared with the current rate of $4.90 under the WSA rate, requested protection of its subcharters, stating that the earnings would be about $550 per day.

On July 31, 1947, the Association of American Ship Owners telegraphed that the overtonnage of the foreign trades would be disastrous if not checked, as sales were being discouraged if not altogether halted, and ownership seriously jeopardized. To encourage private ownership, it vigorously urged sufficient withdrawals of chartered vessels to effect a balance between space and cargoes and

> • • • to establish a relationship between the chartered tonnage of the several charterers and the tonnage *owned* by them either currently or as of September 3, 1939, whichever such owned tonnage may be greater. [Emphasis supplied.]

On July 31, 1947, William Radner, Esq., representing a charterer in the domestic trade, transmitted to the Assistant General Counsel (and later, to the Commission) a memorandum in which he stated that:

> • • • Congress prescribed the world market standard as the floor below which rates could not be allowed to drop under Section 5(b) • • •.

He further stated that world market rates should be fixed on the basis of adjusted time charter rates. The test under the statute, he said, was:

> • • • to establish what a prospective charterer, ready, willing and able to charter, would be willing to pay to an owner who desires to charter in an operation "similar" to that contemplated • • •.

The world market rate proviso, according to him, was intended:

> • • • to insure that the government receives full value for the use of the vessel, not on the basis of maximum use in the most profitable trade, but rather on the basis of the particular use to which the vessel is required to be devoted or one similar thereto. The government is to secure full value but not excessive compensation. The purpose of the world market provision was to make certain that the United States would secure the full value of the use of its vessels.

That there is no world market, he said, "may enlarge but does not restrict the Commission's discretion."

> Thus, the world market proviso merely means that the Commission in fixing just compensation for the use of its vessels should use *the highest prevailing market in the world* for such use or similar use. [Emphasis supplied.]

As to the discretion of the Commission in respect of setting charter hire under section 5(b) of the 1946 Act, Mr. Radner quoted Chairman Weichel of the House Merchant Marine Committee as saying:

> • • • with reference to anything which is responsibility they [the Commission] want a legislative act so they don't have to exercise their discretion. • • • You are asking for legislation all the time in place of using discretion. I understand that. I want to know why they don't try to do something as members of the Commission.

Mr. Radner also quoted from the House and Senate reports as follows in respect of the basic policy of the act:

H.R. No. 1526, page 14; Senate Report; and Conference Report:

> * * * the discretion placed in the Commission by this section as to charters will be governed by the declaration of policy and other provisions of the bill.

Senate Report No. 807, 79th Congress, page 6, et seq:

> The objective of the measure [Ship Sales Bill] is, of course, the transfer of Government-owned tonnage to private ownership for operation in both foreign and domestic trades.

33. At the Commission meeting of August 8, 1947, the President of the National Federation of American Shipping, Inc., of which American Merchant Marine Institute, to which Eastern Gas belonged, was a member, opposed any more charters because the market was definitely overcrowded. He was of the opinion there should be a weighted average in favor of ship owners and that there should be no charters to those acting as agents for foreigners. He mentioned several possible methods of reducing the outstanding charter tonnage including "economic controls involving *split accounting periods* and controlled redeliveries." [Emphasis supplied.]

Thereupon, the Commission decided that no more vessels would be chartered (except for domestic and berth trades) in order to reduce the number of chartered vessels, the necessity for which was evidenced by freight rates below operating costs. Various methods of modifying the charters were considered, including elimination of right to cancel, higher basic hire and split accountings.

On August 14, 1947, the Commission decided that all 78 charterers would be notified that the charters would be canceled on 15 days' notice, effective September 1, 1947, but that new charter terms would be submitted prior thereto. The telegrams were sent next day to all charterers including the cross-respondent.

On August 18, 1947, American Foreign Steamship Corporation and Wessel Duval & Co., Inc., telegraphed requesting modification of the August 15 termination telegram so that it would not be effective if the new terms were accepted. Like States Marine Corporation in its July 30, 1947, letter, those two companies also wanted the old Form 303 charter to continue so as, *inter alia*, to *prevent the termination of existing subcharters for numerous consecutive voyages at good compensatory rates*, such as the aforementioned favorable ATIC subcharters for one year.

Again, by letter of August 19, 1947, States Marine Corporation insisted on an amendment of the Form 303 charter which would contain any modification, *inter alia*, to eliminate possible resulting termination of:

> • • • subcharters presently committed for numerous consecutive voyages at good compensatory rates • • •. • • • there is a strong possibility that consecutive voyage charters may be cancelled by the charterers because of the fact that the freight rates involved are considerably higher than current market rates.

The same day, August 19, 1947, the Ship Operators Association, Inc., telegraphed, urging withdrawal of the termination notice [which would continue the sliding scale provision] or postponement of action in view of the then freight market conditions.

At its meeting on August 19, 1947, the Commission gave consideration to cutting down the overtonnage by limiting charters to those who were ship owners on a ratio basis. Commissioner Mellen expressed the view that—

> easy chartering will discourage owners and others from buying ships,

and he recommended that the charter terms be such

> as may be necessary to safeguard present and potential ship owners and yet permit the economical movement of such cargoes.

He favored a charter hire increase. Separate accounting as a method of inducing redeliveries was discussed, with the right to obtain vessels in the future being subject to additional burdens. The Commission gave consideration to the fact that:

> Merchant Ship Sales Act of 1946 is primarily a sales act and not a chartering act.

34. On August 20, 1947, the Commission voted 3 to 2 not to increase the Form 303 fixed, basic hire. Commissioner Parkhurst stated that, if the basic hire was not raised, he favored additional hire of not lower than 75 percent (instead of starting at 50 percent as was the case under the sliding scale). Mr. Mellen favored an increase in the basic hire and a change in the sliding scale, in order to stimulate the profit motive. A telegram of August 20, 1947 was approved and sent to all charterers, including Eastern Gas. It referred to the August 15 termination telegram, and proposed an addendum for about six months, effective September 1, 1947, with *no change in the basic and additional hire* [sliding scale] in the charters then outstanding, right to terminate on 15 days' notice *after 60 days* from the date a vessel becomes subject to the addendum, *accounting cut-off* with voyages begun after September 1, 1947, the right to establish reserves for repairs and insurance, and future allocations to be subject to additional redelivery obligations. Acceptance was to be by August 27, 1947, in lieu of which the vessels were to be redelivered in accordance with the August 15 telegram.

35. By telegram of August 25, 1947, Eastern Gas accepted the addendum proposed in the August 20 telegram as to any vessels then under charter, which included acceptance of the sliding scale for the period of the extension, under the stiffened terms of the addendum. On August 27, 1947, pursuant to Commission action, all charterers, including Eastern Gas, were advised that their acceptance of the Foreign Trade Addendum might cover all or any lesser number of vessels under charter, and that, with

respect to those as to which the addendum was not accepted, the August 15 termination notice was to stand, whereas the termination notice was to be considered withdrawn as to vessels included in the acceptance. The formal Foreign Trade Addendums were transmitted to Eastern Gas and subsequently returned, executed, without any objection.

36. In its report to Congress for the quarter ending September 30, 1947, the Commission reported that, at the beginning of the quarter, 1,486 vessels were under charter under the 1946 Act, but that redelivery notices had reduced the number to 1,313 by the end of the quarter. The Report states that a sharp downward turn in the freight market developed shortly after the beginning of the quarter

> due primarily to the reduction in export coal and grain shipments and also the curtailment of UNRRA programs. Freight rates dropped, in some cases as much as 33⅓ percent below those of March 1947, and chartered vessels began to be laid up for lack of cargo.

In explaining the Foreign Trade Addendum to Congress, the Commission explained that, in considering the change in its chartering program, it

> • • • gave full consideration to the view expressed in Senate Report No. 392 submitted to Congress June 26, 1946, by the Senate Committee on Interstate and Foreign Commerce with respect to an increase in the rate of basic hire and recapture [additional hire] rates.

The report explained that there was no change in the basic hire or the sliding scale provision, as such, under the Foreign Trade Addendum, but set forth fully the accounting cut off as of September 1, 1947, in applying the sliding scale, and stated:

> This action was designed to require the charterer to carry on all operations after August 31, 1947, without offsetting future losses against additional charter hire [sliding scale] due the Government from voyage profits of the prior period.

Aggregate redeliveries, according to that report, were 145 vessels, which Commission files show were made by 29 charterers. That report, however, did not reflect the full effect of the August 15 and 20 telegrams. Commission files reveal 172 redeliveries as a result thereof. The redeliveries were mostly Libertys, all except 9 of which were in the foreign trade. Prior to the redeliveries, 1,408 vessels were under charter to 78 charterers.

None of the 74 unqualified acceptances of the Foreign Trade Addendum, extending the sliding scale for *about* six months, suggested any question as to its validity. Pope & Talbot, Inc. (August 26, 1947, letter) expressed appreciation for the Commission's prompt action taken to remedy the offshore charter situation. Several not only accepted the addendum but applied for additional vessels. Marine Transport Lines, Inc. (August 27, 1947, letter) cancelled substantially 25 percent as being what it believed each charterer should withdraw

> * * * in order to encourage vessel disposals under Ship Sales Act, and to bring about stability in current charter market.

Isbrandtsen Co., Inc., telegraphed on August 27, 1947, that it appreciated

> * * * the many currents and crosscurrents in foreign commerce today * * * which we take it have been a factor in present shift of policy.

Isthmian Steamship Company telegraphed on August 27, 1947, that it understood

> * * * that primary purpose of your program is to have ships turned back to Government.

On August 29, 1947, the American Mail Line stated it still did not believe that all due regard had been given to a long-range program.

On September 23, 1947, the General Manager transmitted

a September 12 analysis by Arthur G. Syran, stating that the effect of the Foreign Trade Addendum was

> * * * compelling operators to fix their vessels in the open market at true compensatory rates.
>
> * * * * *
>
> If an operator was unable to fix his vessel at a profit he would take the prudent step of returning the vessel * * *, thereby reducing the available number in the open market. Thus the Commission action in changing the accounting period will tend to eliminate the excess number of vessels in the market and stabilize rates and at the same time permit ample ships to be available for the movement of the export coal and grain programs.

37. The report to Congress for the quarter ending December 31, 1947, stated that chartered vessels had been reduced to 1,101, including 52 under notice of redelivery, of which number 1,041 were for offshore services. A total of 212 had been redelivered during the quarter, 192 of which were after the right to terminate under the Foreign Trade Addendum became effective, indicating the reduced demand for tonnage. The report referred to the Foreign Trade Addendum as being

> * * * an effort to meet the changed conditions due to the decrease in available cargo for shipment to foreign ports.

38. On January 30, 1948, Senate Report 856 reported on S.J. Res. 173 for, *inter alia*, extension of authority to charter. It included a Commission report stating that 1,021 ships were chartered for the offshore trades as of January 15, 1948. The report was to the effect that privately owned tonnage was insufficient to move relief cargo, necessitating continuation of chartering. The Senate Report called specific attention to quarterly reports to Congress, and stated:

> Particular reference is made to the statement regarding the rate of basic hire and recapture [sliding scale] rates and the modified charter terms and conditions announced on August 20, 1947 [tightening the charter terms and retaining the sliding scale].

39. Congressional hearings were again held by the Weichel Committee in February 1948, at which time numerous members of the American shipping industry again complained of the fact that chartering under the 1946 Act was operating as a deterrent to the purchase of Government vessels. Again, both members of the Commission and of the industry explained in detail the nature and results of operations under the sliding scale of additional hire provided for in the Form 303 charter, and again no witness intimated the belief that such contractual additions to the 50 percent statutory amount was in any way illegal.

Public Law 423, 80th Cong., approved February 27, 1948, continued the Commission's chartering authority to March 1, 1949.

40. H.R. Rep. No. 60, 81st Cong., 1st Sess. (1949), approved a recommended four-month extension of chartering authority "with the understanding that the Commission will make no changes in its present procedures during that period." A similar direction to the Commission not to change its then present procedures was likewise contained in S. Rep. No. 55, 81st Cong., 1st Sess. (1949). The "present procedures" which were to remain unchanged included, of course, the sliding scale of contractual plus statutory additional charter hire with which Congress was by this time most thoroughly familiar.

Subsequently, H.R. Rep. No. 564, 81st Cong., 1st Sess. (1949) and S. Rep. No. 483, 81st Cong., 1st Sess. (1949) recommended extension of chartering authority for an additional year, but both reports stated:

> • • • it is contemplated that the Maritime Commission will continue to sell, charter and operate ships in accordance with existing procedures and without any change in its present policies.

Public Law 147, 81st Cong., approved June 29, 1949, subsequently extended the authority to charter to June 30, 1950. The effect of the congressional direction was to require the Commission to continue its then present use of the Form 303 charter, including, of course, the sliding scale provision in Clause 13.

41. I wish to reiterate most emphatically to the best of my knowledge and belief that at no time did any member of the Maritime Commission or its successor agencies, including members of its legal staff, question the legality of the inclusion of the so-called "sliding scale of additional charter hire" in Clause 13 of the Form 303 charter. I wish further to emphasize that the chartering committees of which I was a member at no time expressed doubts that Maritime was fully authorized by the terms of section 5(b) of the 1946 Act to fix charter rates in such manner as were felt to be consistent with the statutory policy of promoting sales and discouraging chartering. The only hesitancy as to the use of the sliding scale was that expressed by Mr. Sullivan, who was not a lawyer, but objected as described herein. And that hesitancy was generated solely by his belief that the proposed sliding scale provision might not result in charterers paying the world market charter rate which we felt to be compulsory under the statute.

/s/ CHARLIE H. MCDANIEL.

Subscribed and sworn to before me this 18th day of November, 1960.

/s/ HELEN S. DWYER,
Notary Public. [SEAL]

My commission expires November 14, 1964.

SUPPLEMENT TO RECORD ON APPEAL CERTIFIED ON AUGUST 9, 1962

[Affidavit of Benjamin F. Bouldin]

[Caption omitted]

AFFIDAVIT OF BENJAMIN F. BOULDIN

UNITED STATES OF AMERICA,
District of Columbia, ss:

BENJAMIN F. BOULDIN, being first duly sworn, deposes and says that:

1. I am a citizen of the United States, and a resident of Maryland, presently serving as an auditor with the Division of Audits, Office of the Comptroller, Maritime Administration, United States Department of Commerce. I am a qualified accountant and have been employed by this agency and its predecessor agencies since August of 1936 except for a two and one-half year period when I served with the Army Audit Division between June 1955 and January 1958, and a one-year period between September 1941 and September 1942 when I was in the armed forces. I make this affidavit to the best of my knowledge and belief based upon my use and examination of files of this agency and its predecessor agencies.

2. Under separate cover and marked Exhibits A through V are copies of the following pertinent documents on file with the Maritime Administration.

. . . . . .

3. On July 25, 1946, Eastern Gas submitted an offer to charter on warbuilt EC 2 (Liberty) collier in accordance with the Merchant Ship Sales Act (Public Law 321, 79th Cong., 2d Sess.), and the rules and regulations prescribed by the United States Maritime Commission. Eastern Gas' offer further stated that it agreed that any amendment or

modification of the rules and regulations were to be binding on all transactions approved by the Commission after the date of publication in the Federal Register (Exhibit C).

4. On August 12, 1946, the Maritime Commission sent a joint telegram (Exhibit D) to all interim charterers (Eastern Gas was not a charterer at this time). The charter hire terms fixed by the Commission for chartering under the 1946 Act were communicated to the interim charterers in paragraph 2 and 3 of the August 12 telegram, which advised that "basic" hire would be 15 percent per annum of either the unadjusted statutory sales price or the floor price of the vessels (whichever was higher), and that "additional charter hire" would be at a 50%-75%-90% sliding scale of sharing in the charterers' excessive profits. This was the same combination of statutory and contractual charter hire which the Commission decided on August 9, 1946, to be the charter hire rate appropriate for 1946 Act chartering.

5. Although the files of the Commission do not reflect whether the August 12, 1946 telegram was sent to Eastern Gas it appears that they did receive the telegram or had full knowledge of its contents since on September 20, 1946, Eastern Gas telegraphically accepted the Commission's offer to charter vessels on the terms contained in the August 12 telegram.

6. Thereafter, on September 10, 1946, the Commission published Supplement 5 to General Order 60 in the Federal Register (11 Fed. Reg. 9936). Supplement 5 (Exhibit B) contained the complete text of the "Form 303 SHIPSALES DEMISE" charter to be utilized in 1946 Act chartering, Part I setting forth the special provisions, and Part II the standard provisions.

7. The formal charter (Exhibit A) dated October 1, 1946, was tendered to Eastern Gas and was executed by it on November 7, 1946, and by the Commission on November 13, 1946.

8. A total of ten vessels were utilized by Eastern Gas under contract MCe-41881. The names of such vessels, their types, and dates of delivery and redelivery under the char-

ter and addenda are contained in Exhibit K hereto. There was also a simultaneous delivery and redelivery of eight of the vessels under the Foreign Trade Addendum (see paragraph 9, *infra*) to contract MCc 41811 (Addendum No. 7 to Exhibit A dated September 1, 1947) and the records of the Maritime Administration reflect that the simultaneous deliveries and redeliveries were as follows:

WILLIAM BEVAN 9/6/47; ISAAC SHARPLESS 9/8/47; WILLIAM MCKINLEY 9/8/47; WASHINGTON IRVING 9/9/47; GEORGE VANCOUVER 9/16/47; EMILY DICKINSON 9/16/47; ANDREW STEVENSON 9/21/47; JAMES BOWDOIN 10/4/47. The MERRIMAC SEAM and WILLIAM H. KENDRICK were redelivered prior to the execution of the Foreign Trade Addendum.

9. Following congressional hearings in the spring of 1947 with respect to extending the Commission's authority under the 1946 Act, S. Rep. No. 392, 80th Cong., 1st Sess., was issued on June 26, 1947, and H.R. Rep. No. 725, 80th Cong., 1st Sess., was issued on June 27, 1947. The committees issuing those reports were reluctant to extend the Commission's authority to charter, because they believed that chartering had

> militated against the accomplishment of the objectives of the [1946] Act of selling war-built merchant ships and of building for the future a privately operated American merchant marine.

Both committees recommended extension, however, but only

> with the understanding that the basic rates for the charter of dry-cargo vessels and recapture [the sliding scale of additional charter hire] rates will be immediately increased, thus encouraging the purchase rather than charter of these ships.

Public Law 127 (Act of June 28, 1947, 61 Stat. 190), approved the day following issuance of H.R. Rep. No. 725, extended the Commission's chartering authority (then due to expire on December 31, 1947) to March 1, 1948.

In an attempt to implement this congressional command

to immediately increase both basic and additional charter hire rates, the Commission considered raising "basic" charter hire from 15 to 25 percent of the vessels' unadjusted statutory sales price, and eliminating the contractual (75 percent and 90 percent) portion of the additional charter hire. However, strong industry opposition to this proposal was received by the Commission, a number of operators also complaining that too many government vessels were then under charter.

As a result of its consideration of these various factors, the Commission decided that no more vessels would be chartered for foreign service operation. And, on August 14, 1947, the Commission decided to cancel all charters as of September 1, 1947. A telegram to that effect (Exhibit 5) was sent to the charterers, including Eastern Gas, on August 15, 1947.

[NOTE: Clause C. (2) of the charters provided for a charter period of "about" six months, and Clause 14 permitted termination by either party on 15 days' notice. All of the vessels then under charter by Eastern Gas had either been utilized for at least six months or (in one case) would have been unable to commence and complete another voyage within the six months' period. The one exception was the WASHINGTON IRVING which had been under charter for only 3 months and 16 days.]

10. Since there was considerable opposition to a complete cessation of chartering, the Commission informed the charterers in its August 15 telegram that an opportunity to continue use of the vessels then under charter would be shortly offered on new terms and conditions to be announced.

Some of the charterers immediately requested the Commission to modify its August 15 notice of termination so that the termination of existing charters (which would cost them the loss of existing subcharters) would be effective only in case the charterers did not accept the new terms.

These various factors—congressional direction to increase rates, overtonnage of the charter market, and

requests of charterers that existing charters not be terminated so as to cost them the loss of remunerative subcharters—were considered by the Commission at meetings on August 19 and 20, 1947. After discussing various solutions, including the raising of rates, the Commission decided that the best solution to the problem was to offer the industry an addendum to existing charters, effective for six months from September 1, 1946, with no change in rates, with the right to terminate on 15 days' notice after 60 days' operation under the addendum, and with an "accounting cut-off" for voyages commencing after September 1, 1947.

[The concept of an "accounting cut-off" or "split accounting" had first been proposed as a solution to the Commission at its August 8, 1947 meeting by the President of the National Federation of American Shipping, Inc., of which the American Merchant Marine Institute, to which Eastern Gas belonged, was a member.]

As a result of this Commission decision, a telegram was sent to all charterers on August 20, 1947 (Exhibit T), offering them an addendum to their existing charters on the terms fixed at the Commission meeting of that date. As to those charterers not desiring to accept the new terms, the termination notice of August 15 was to remain effective. The charterers were directed to advise the Commission by August 27 if they desired to accept the proposed addendum. On August 25, 1947, Eastern Gas unconditionally accepted the proposed addendum (see Exhibit U), and on August 27, 1947, the Commission gave further details to Eastern Gas (Exhibit V).

11. As previously explained in paragraph 9 of this affidavit, both the House and Senate committees, in their June 1947 reports on the extension of chartering authority, had ordered the Commission to *increase* both basic hire and additional [sliding scale] charter hire. This put the Commission in a difficult position when the charter market began to fall by July 1947. The Commission explained how it had met the congressional directive in its report to Congress for the quarter ending September 30, 1947. It therein

stated that, after considering the views of the congressional committees, it did not increase either basic or additional charter hire because of the market slump, but, instead, required an accounting cut-off under the Foreign Trade Addendum, thereby inducing redeliveries and, at the same time, protecting the Government's additional charter hire earned prior to the Foreign Trade Addendum. Congress was fully and completely advised of the Foreign Trade Addendum both in reports and during hearings, and at no time did it object to the Commission's action.

12. The Foreign Trade Addendum to MCc 41881 (Addendum No. 7) was transmitted by the Commission to Eastern Gas on September 26, 1947.

13. Eastern Gas' Foreign Trade Addendum was sent to it for execution by a letter dated September 26, 1947, and was returned by letter of October 7, 1947, duly executed by it on October 3, 1947. Eastern Gas made no reservations, qualifications to the Foreign Trade Addendum. Maritime returned a fully-executed copy to Eastern Gas on October 14, 1947. On September 26, 1947, Maritime sent a letter to Eastern Gas requesting it to advise Maritime's district office upon the termination of the voyage in progress on August 21, 1947, so that change of status certificate under the Foreign Trade Addendum could be executed. Eastern Gas executed change of status certificates for each of the vessels covered by Exhibit A to Addendum No. 7 to Contract MCc 41881 (Exhibit A). Eastern Gas forwarded to Maritime its preliminary accountings covering voyages commencing after September 1, 1947, under the Foreign Trade Addendum (Addendum No. 7 to Exhibit A) by letters dated January 8, and February 4 and 27, 1948 (Exhibits L 11, L 12 and L 13). Eastern Gas thus clearly recognized the Foreign Trade Addendum and never raised any objection while it was filing its preliminary statements.

14. By a letter of instruction dated March 8, 1948, libelant was informed how to compute capital necessarily employed under the Foreign Trade Addendum. In a letter dated April 19, 1948, libelant was given notice that Clause 13 required a "complete settlement for additional charter

hire at the end of each calendar year or at the termination of the agreement, wherefore its statement for the end of the month in which the last voyage terminated under the original charter (operations outside of Addendum 7)" should be complete and accurate and the total additional charter hire shown to be due should be remitted. Eastern Gas replied, in a letter dated April 28, 1948, that it was impossible to give a "complete and accurate statement" of additional charter hire for voyages commenced prior to September 1, 1947, because of unsettled matters such as the pricing of inventory, latent defect claims, and claims of undue delays in accepting delivery. By a letter of August 6, 1948, Eastern Gas transmitted a check for $26,677 stating that it was "the balance due you for additional charter hire as reflected in statements rendered as of November 30, 1947." At this time no objection was made to the Foreign Trade Addendum or to the additional charter hire under Clause 13.

15. Supplement 21 to General Order 60 (15 Fed. Reg. 1789) was published on March 30, 1950, and gave full instructions as to the application of the Foreign Trade Addendum and restated and explained the Clause 13 requirements of cumulation of net voyage profits for each calendar year separately which Eastern Gas agreed to follow in its application to charter. In a letter dated April 4, 1950, Maritime sent libelant "Illustrative examples" of how to apply Supplement 21 to General Order 60 and specifically set forth the methods of calculating additional charter hire. Eastern Gas did not raise any objections to Supplement 21 or to the letter dated April 5, 1950. In a letter dated April 26, 1950 (Exhibit M) Eastern Gas undertook to itemize problems which would be encountered in rendering its final accountings. It listed nine items, and additional charter hire was not among them nor did it in any way allege that the Foreign Trade Addendum was illegal.

16. By a letter of August 7, 1951 (Exhibit N) Eastern Gas forwarded its "Final Accounting" applying the Foreign Trade Addendum and with certificates showing addi-

tional charter hire payable in the total amount of $181,418.05 ($454,580.05 less $273,162.00 prior payment) together with a check for $28,132.63. The Final Accounting had a certificate from Arthur Young & Co., Accountants, attached stating that it conformed to the charter and regulations and that it "fairly represented the proper determination of 'additional charter hire' accrued to the account of the Maritime Administration under such agreements for the period from November 1, 1946 to December 31, 1947." On August 30, 1951, Maritime returned Eastern Gas' check in the sum of $28,132.63 and requested a check for $180,482.38 additional charter hire. Eastern Gas replied on September 6, 1951, taking no exception or offering any revision to the $180,482.38 balance due. Upon review of the accountings Maritime discovered that the computation of additional charter hire under the 1947 offshore operations should have extended to 90 percent instead of only 75 percent as was done in the accountings. Maritime in a letter dated May 6, 1952 to Eastern Gas explained the adjustments in the accountings up to 90 percent additional charter hire.

17. By a letter of September 14, 1954, Eastern Gas transmitted to Maritime a supplementary final accounting. The supplementary final accounting not only showed no objection to the sliding scale of additional charter hire but in fact corrected its original "Final Accounting" to change the sliding scale of additional charter hire from 75 percent to 90 percent for the 1947 offshore operation prior to the Foreign Trade Addendum. Moreover, Eastern Gas did not take any exception to the Foreign Trade Addendum accounting cut-off.

18. Indeed, none of the accountings submitted by Eastern Gas during the period in which it operated vessels under the charter contained any intimation that Eastern Gas considered said charters to be illegal in any respect. It was not until February 15, 1955 (8 years and 10 months after redelivery of the last vessel) that Eastern Gas in any way challenged the legality of the charters.

21. Eastern Gas' memorandum (p. 13) alleges that the chartered vessels "were used preponderantly in carrying cargoes for the United States or its allies." A footnote on that page further alleges that such "Government" subcharters typically contained a quoted clause requiring the subcharterer to pay additional compensation for the use of the subchartered vessels in the event the Maritime Commission increased "basic hire" to more than fifteen per centum per annum of the estimated statutory sales price.

I do not agree with those unsworn statements of opposing counsel. Maritime regulations required filing with the Commission copies of all subcharters entered into by American Export. Of the 4 subcharters so filed by Eastern Gas with the Commission, only one was with the United States, or agencies thereof. And only that one filed with the Commission contained a clause requiring the subcharterer to pay additional compensation if the basic hire were increased by the Commission.

22. I have read and reviewed the affidavit of Robert A. Caswell attached to Eastern Gas' exceptions and exceptive allegations. The first sentence of paragraph 3 of the Caswell affidavit inaccurately and misleadingly states that the charters provided for the payment of additional charter hire "pursuant to section 709 of the Merchant Marine Act of 1936." No such provision was contained in the charter (see Exhibit A) and, as more completely explained in the affidavit of Charlie H. McDaniel, the additional charter hire stipulated in the charter was a combination of *statutory* profit sharing under section 709(a) and contractual profit sharing under section 5(b) of the 1946 Act.

23. Maritime was never advised until February 15, 1955 that Eastern Gas in anywise objected to the "sliding scale" and it was not until the libel was filed herein that Eastern Gas contended that the Foreign Trade Addendum was illegal. The Foreign Trade Addendum and cumulation issues were not raised by the industry groups and although the sliding scale was objected to by both tramp and owner groups, they themselves proposed modified sliding scales of additional charter hire above 50 percent. In any event,

when such attempts failed, Eastern Gas unqualifiedly accepted the sliding scale, gave bond to perform it, and operated under it with increased allocation of vessels for about a year. It waited over eight years before contending that the sliding scale was invalid.

/s/ BENJAMIN F. BOULDIN.

Subscribed and sworn to before me this 20th day of November, 1960.

/s/ MADELINE MACDONALD,
Notary Public. [SEAL.]

My Commission expires March 14, 1961.

VOLUME II: EXHIBIT A

[Contract No. MCe—41881]

Form No. 303 Contract No. MCe—41881
9/1/46

SHIPSALESDEMISE

UNITED STATES MARITIME COMMISSION
BAREBOAT CHARTER AGREEMENT OF
WAR-BUILT DRY-CARGO VESSEL

THIS AGREEMENT, dated as of October 1, 1946, between the UNITED STATES OF AMERICA, acting by and through the UNITED STATES MARITIME COMMISSION (hereinafter called the "OWNER") and EASTERN GAS AND FUEL ASSOCIATES (hereinafter called the "CHARTERER"), whose address is 250 Stuart Street, Boston 16, Massachusetts

WITNESSETH:

PART I

CLAUSE A. *Uniform Terms.* This Agreement consists of this Part I, and Part II published in the Federal Register of September 10, 1946, the provisions of said Part II being incorporated by reference as part of this Agreement.

Unless otherwise in this Part I expressly provided, all of the provisions of said Part II shall be a part of this Agreement as though fully set forth in this Part I. In the event of a conflict between the provisions of Parts I and II, the provisions of Part I shall govern to the extent of such conflict.

. . . . . .

CLAUSE C. (1) *Vessels Chartered and Other Details.* The Vessel or Vessels to which this Agreement relates, and the respective ports of delivery (if known) and applicable operating limits are as follows or as may be included hereunder by Addenda hereafter executed:

Name of Vessel	Type	Port of Delivery	Basic Hire, Per Calendar Month*	Valuation	Operating Limits as Specified in Clause:
MERRIMAC SEAM	EC2-S-AW1		$7,987.50	$639,000	D1(a)

* 15% per annum of either the unadjusted statutory sales price or the floor price of the vessel, whichever is higher.

. . . . . .

(2) *Period of Vessel's Use.* As to each Vessel a period of about six months from time of delivery to the Charterer pursuant to this Agreement, but subject to the provisions of Clause 14 of Part II; provided however that whenever the President shall proclaim that the security of the national defense makes it advisable, or during any national emergency declared by proclamation of the President, the Owner may terminate the Agreement without cost to the United States, upon such notice to the Charterer as the President shall determine.

. . . . . .

CLAUSE E. *Rate of Basic Charter Hire.* Unless otherwise specially agreed such rates as appear opposite the name of each Vessel listed in Clause C(1) and such addenda as may be executed.

. . . . . .

IN WITNESS WHEREOF, the Charterer has executed this Agreement in quadruplicate the 7th day of November, 1946, and the Owner has executed this Agreement in quadruplicate the 13th day of November 1946.

Execution for Charterer:

ATTEST:
C. RUSSELL WALTON,
Assistant Secretary
or if not incorporated
In the presence of:
——, ——,
Witness

EASTERN GAS AND FUEL ASSOCIATES
By: R. C. GOODWIN,
Vice President

Execution for Owner:
Approved as to form:
ARTHUR E. FERRIS,
Charter, Agency and Traffic Counsel
By: D. ECCLESTON

UNITED STATES OF AMERICA,
By: UNITED STATES MARITIME COMMISSION,
By: R. L. MCDONALD,
For the Commission.

PART II

CLAUSE 12. *Basic Charter Hire.* The Charterer shall pay to the Owner the basic charter hire at the monthly rate provided for in Part I hereof from the day and hour of delivery of the Vessels until and including the day and hour of redelivery to the Owner pursuant to the terms of this Agreement; or if any Vessel shall be lost, hire shall continue until the time of her loss, if known, or if the time of loss be uncertain then up to and including the time last heard from. Payment of such basic charter hire shall be made to the Owner at Washington, D. C., on delivery of the Vessel for the remainder of the calendar month in which delivery is made, and thereafter monthly in advance on the first day of each month.

CLAUSE 13. *Additional Charter Hire.* If at the end of

the calendar year 1946, or any subsequent calendar year or at the termination of this Agreement, the cumulative net voyage profit (after the payment of the basic charter hire hereinabove specified and payment of the Charterer's fair and reasonable overhead expenses applicable to operation of the Vessels) shall exceed 10 per centum per annum on the Charterer's capital necessarily employed in the business of the Vessels (all as hereinafter defined), the Charterer shall pay over to the Owner at Washington, D. C., within 30 days after the end of such year or other period, as additional charter hire for such year or other period, an amount equal to the percentages of such cumulative net voyage profit in excess of 10 per centum per annum on such capital computed in accordance with the following table (but such cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in any subsequent year or period):

Cumulative net voyage profit (in excess of 10% per annum on capital necessarily employed) not in excess of $100 per day—50%.

Cumulative net voyage profit (in excess of 10% per annum on capital necessarily employed) in excess of $100 per day but not in excess of $300 per day—75% on such excess over $100 per day.

Cumulative net voyage profit (in excess of 10% per annum on capital necessarily employed) in excess of $300 per day—90% on such excess over $300 per day.

The Charterer agrees to make preliminary payments to the Owner on account of such additional charter hire and on account of any additional charter hire accrued under any War Shipping Administration Form 203 (WARSHIPDEMISEOUT) charter (prior to the times of payment provided for above or in such WARSHIPDEMISEOUT charters) at such times and in such manner and amounts as may be required by the Owner; provided however, that such payment of additional charter hire shall be deemed to be preliminary and subject to adjustment either at the time of the rendi-

tion of preliminary statements or upon the completion of each final audit by the Owner, at which times such payments will be made to the Owner as such preliminary statements or final audit may show to be due, or such overpayments refunded to the Charterer as may be required.

CLAUSE 14. *Termination.* Either the Owner or the Charterer may terminate the period of use of any of the vessels by giving written notice to the other party at least fifteen (15) days prior to the termination of any voyage hereunder, in which event the vessel shall be redelivered at the port of redelivery provided for in Clause C of Part I hereof upon termination of the voyage during which such notice is given.

* * * * *

CLAUSE 21. *Bond.* The Charterer, at or before delivery of the first Vessel or Vessels under this Agreement, will furnish the owner with a bond with sufficient surety, in an amount of not less than $25,000 per Vessel for all Vessels chartered hereunder, such bond to be approved by the Owner, both as to form and sufficiency of the sureties, and to be conditioned upon the true and faithful performance of all and singular the covenants and agreements of the Charterer contained in this Agreement, including, but not limited to, the Charterer's obligation to pay charter hire and damages and to indemnify against liens. The Charterer may, in lieu of furnishing such bond, pledge United States Government securities in the face value of the required amount under an agreement satisfactory in form and substance to the Owner.

* * * * *

CLAUSE 24. *Events of Default.* The following shall constitute events of default under this Agreement:

(a) The failure of the Charterer to pay the charter hire on any Vessel as and when the same shall be due under the terms of this Agreement.

(b) The failure of the Charterer to operate any Vessel as required by Clause D of Part I or the Operation of any Vessel on some other route without the prior written approval of the Owner.

(c) Any material misrepresentation by the Charterer in connection with this Agreement whether before or after execution hereof and whether made in an application, report or otherwise, or any willful failure by the Charterer to disclose information necessary to cause any material representation by it not to be misleading.

• • • • •

(g) Any breach by the Charterer of its obligations under this Agreement or any agreement executed in connection therewith (including but not limited to any operating differential subsidy agreement with respect to the Vessels), or any ship mortgage given to or construction agreement made with the United States.

• • • • •

CLAUSE 27. *Cancellation or Modification by Mutual Consent: Waivers.* This Agreement may be terminated, modified, or amended at any time by mutual consent.

• • • • •

By Order of the United States Maritime Commission.

A. J. WILLIAMS,
Secretary.

September —, 1946.

Authority: Section 12(d) of the Merchant Ship Sales Act of 1946 (60 Stat. 41).

Contract No. MCc-41881
Addendum No. 1

ADDENDUM to BAREBOAT CHARTER (herein called the "Charter") dated as of October 1, 1946, between the UNITED STATES OF AMERICA, acting by and through the UNITED STATES MARITIME COMMISSION (hereinafter called the "Owner") and EASTERN GAS & FUEL ASSOCIATES (hereinafter called the "Charterer").

WHEREAS, the Owner and the Charterer have heretofore executed a Bareboat Charter (Contract MCc-41881, Shipsalesdemise, Form No. 303) covering certain vessels; and

WHEREAS, Clause C (1) of said charter contemplates the charter of additional vessels to be shown by addenda to be executed; and

WHEREAS, the Charterer has contracted for a certain additional vessel or vessels;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

Clause C (1) is amended by the addition of the following vessel or vessels and pertinent particulars:

Name of Vessel	Type	Port of Delivery	Basic Hire Per Calendar Month*	Valuation	Operating Limits as Specified in Clause:
EMILY DICKINSON	EC-2	Galveston	$7,987.50	$639,000	D-2

* 15% per annum of either the unadjusted statutory sales price or the floor price of the vessel, whichever is higher.

IN WITNESS WHEREOF, the Owner has executed this Addendum in quadruplicate the 16th day of December, 1946, and the Charterer has executed this Addendum the third day of December, 1946.

Execution for Charterer:

ATTEST:

C. RUSSELL WALTON,
Assist. Secretary.

or if not incorporated
In the presence of:

——, ——,
Witness.

EASTERN GAS & FUEL ASSOCIATES,
By: R. C. GOODWIN,
Vice President.

Execution for Owner:

Approved as to form:

ARTHUR E. FERRIS,
Charter, Agency and Traffic Counsel.
By D. ECCLESTON.

UNITED STATES OF AMERICA,
By: UNITED STATES MARITIME COMMISSION,
By: R. L. MCDONALD,
For the Commission.

Contract No. MCc-41881
Addendum No. 2

ADDENDUM to BAREBOAT CHARTER (herein called the "Charter") dated as of October 1, 1946, between the UNITED STATES OF AMERICA, acting by and through the UNITED STATES MARITIME COMMISSION (hereinafter called the "Owner") and EASTERN GAS & FUEL ASSOCIATES (hereinafter called the "Charterer").

WHEREAS, the Owner and the Charterer have heretofore executed a Bareboat Charter (Contract MCc-41881, Shipsalesdemise, Form No. 303) covering certain vessels; and

WHEREAS, Clause C (1) of said charter contemplates the charter of additional vessels to be shown by addenda to be executed; and

WHEREAS, the Charterer has contracted for a certain additional vessel or vessels;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

Clause C (1) is amended by the addition of the following vessel or vessels and pertinent particulars:

Name of Vessel	Type	Port of Delivery	Basic Hire Per Calendar Month*	Valuation	Operating Limits as Specified in Clause:
ANDREW STEVENSON	EC-2	Seattle	$7,987.50	$639,000	D-2
WILLIAM BEVAN	EC-2	New York	7,987.50	639,000	D-2

* 15% per annum of either the unadjusted statutory sales price or the floor price of the vessel, whichever is higher.

IN WITNESS WHEREOF, the Owner has executed this Addendum in quadruplicate the 3rd day of February, 1947, and the Charterer has executed this Addendum the 24th day of January, 1946.

Execution for Charterer:

ATTEST:

C. RUSSELL WALTON,
Assist. Secretary.

or if not incorporated
In the presence of:

——, ——,
Witness.

EASTERN GAS & FUEL ASSOCIATES,
By: R. C. GOODWIN,
Vice President.

Execution for Owner:

Approved as to form:

ARTHUR E. FERRIS,
Charter, Agency and Traffic Counsel.
By D. ECCLESTON.

UNITED STATES OF AMERICA,
By: UNITED STATES MARITIME COMMISSION,
By: R. L. MCDONALD,
For the Commission.

Contract No. MCc-41881
Addendum No. 3

ADDENDUM to BAREBOAT CHARTER (herein called the "Charter") dated as of October 1, 1946, between the UNITED STATES OF AMERICA, acting by and through the UNITED STATES MARITIME COMMISSION (hereinafter called the "Owner") and EASTERN GAS & FUEL ASSOCIATES (hereinafter called the "Charterer").

WHEREAS, the Owner and the Charterer have heretofore executed a Bareboat Charter (Contract MCc-41881, Shipsalesdemise, Form No. 303) covering certain vessels; and

WHEREAS, Clause C (1) of said charter contemplates the charter of additional vessels to be shown by addenda to be executed; and

WHEREAS, the Charterer has contracted for a certain additional vessel or vessels;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

Clause C (1) is amended by the addition of the following vessel or vessels and pertinent particulars:

Name of Vessel	Type	Port of Delivery	Basic Hire Per Calendar Month*	Valuation	Operating Limits as Specified in Clause:
ISAAC SHARPLESS	EC-2	Baltimore	$7,987.50	$639,000	D-2

* 15% per annum of either the unadjusted statutory sales price or the floor price of the vessel, whichever is higher.

IN WITNESS WHEREOF, the Owner has executed this Addendum in quadruplicate the 21st day of March, 1947, and the Charterer has executed this Addendum the 17th day of February, 1947.

Execution for Charterer:

ATTEST:

C. RUSSELL WALTON,
Assist. Secretary.

or if not incorporated
In the presence of:

——, ——,
Witness.

EASTERN GAS & FUEL ASSOCIATES,
By: R. C. GOODWIN,
Vice President.

Execution for Owner:
Approved as to form:

ARTHUR E. FERRIS,
Charter, Agency and Traffic Counsel.
By D. ECCLESTON.

UNITED STATES OF AMERICA,
By: UNITED STATES MARITIME COMMISSION,
By: R. L. McDONALD,
For the Commission.

Contract No. MCe-41881
Addendum No. 4

ADDENDUM to BAREBOAT CHARTER (herein called the "Charter") dated as of October 1, 1946, between the UNITED STATES OF AMERICA, acting by and through the UNITED STATES MARITIME COMMISSION (hereinafter called the "Owner") and EASTERN GAS & FUEL ASSOCIATES (hereinafter called the "Charterer").

WHEREAS, the Owner and the Charterer have heretofore executed a Bareboat Charter (Contract MCe-41881, Shipsalesdemise, Form No. 303) covering certain vessels; and

WHEREAS, Clause C (1) of said charter contemplates the charter of additional vessels to be shown by addenda to be executed; and

WHEREAS, the Charterer has contracted for a certain additional vessel or vessels;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

Clause C (1) is amended by the addition of the following vessel or vessels and pertinent particulars:

Name of Vessel	Type	Port of Delivery	Basic Hire Per Calendar Month*	Valuation	Operating Limits as Specified in Clause:
WILLIAM N. KENDRICK	EC-2	Baltimore	$7,987.50	$639,000	D-2
JAMES BOWDOIN	EC-2	Alameda	7,987.50	639,000	D-2
GEORGE VANCOUVER	EC-2	New York	7,987.50	639,000	D-2

* 15% per annum of either the unadjusted statutory sales price or the floor price of the vessel, whichever is higher.

IN WITNESS WHEREOF, the Owner has executed this Addendum in quadruplicate the 30th day of April, 1947, and the Charterer has executed this Addendum the 23rd day of April, 1947.

Execution for Charterer:

ATTEST:

——, ——,

or if not incorporated
In the presence of:

M. T. CLANCY.
Witness.

EASTERN GAS & FUEL ASSOCIATES,
By: R. C. GOODWIN,
Vice President.

Execution for Owner:

UNITED STATES OF AMERICA,

Approved as to form:

ARTHUR E. FERRIS,
Charter, Agency and Traffic Counsel.
By D. ECCLESTON.

By: UNITED STATES MARITIME COMMISSION,
By: R. L. MCDONALD,
For the Commission.

Contract No. MCc-41881
Addendum No. 5

ADDENDUM to BAREBOAT CHARTER (herein called the "Charter") dated as of October 1, 1946, between the UNITED STATES OF AMERICA, acting by and through the UNITED STATES MARITIME COMMISSION (hereinafter called the "Owner") and EASTERN GAS & FUEL ASSOCIATES (hereinafter called the "Charterer").

WITNESSETH:

WHEREAS, the parties have agreed to include certain additional vessels under this Agreement for special service in the coastwise coal trade (in the carriage of coal between Hampton Roads and New England; and

WHEREAS, the parties desire to treat such vessels as a separate fleet for accounting purposes only during the period of the aforesaid operation;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. Clause C (1) is amended by the addition of the following vessel and pertinent particulars:

Name of Vessel	Type	Port of Delivery	Basic Hire Per Calendar Month*	Valuation	Operating Limits as Specified in Clause:
WILLIAM MCKINLEY	EC-2	Baltimore	$7,987.50	$639,000	D1(a)

* 15% per annum of either the unadjusted statutory sales price or the floor price of the vessel, whichever is higher.

2. The parties hereto further agree that vessels operating under Clause D1 (a); Part I, in the coastwise coal trade shall be considered as a separate fleet during the period of such operation, for accounting purposes only, in computing additional charter hire under Clause 13, Part II. For the purpose of this clause such period shall be deemed to commence as of delivery of the vessel for such coastwise operation and terminate as of the completion of the last voyage in such special service.

IN WITNESS WHEREOF, the Owner has executed this Addendum in quadruplicate the 17th day of July, 1947, and the Charterer has executed this Addendum the 28th day of May, 1947.

Execution for Charterer:

MYSTIC STEAMSHIP DIVISION,
EASTERN GAS & FUEL ASSOCIATES,
By: R. C. GOODWIN,
Vice President.

ATTEST:

WILLIAM M. BRADY.

Execution for Owner:

Approved as to form:

WADE H. SKINNER,
General Counsel.
By ELMER E. METZ,
By D. ECCLESTON.
Counsel.

UNITED STATES OF AMERICA,
By: UNITED STATES MARITIME COMMISSION,
By: R. L. MCDONALD,
For the Commission.

Contract No. MCc-41881
Addendum No. 6

ADDENDUM to BAREBOAT CHARTER (herein called the "Charter") dated as of October 1, 1946, between the UNITED STATES OF AMERICA, acting by and through the UNITED STATES MARITIME COMMISSION (hereinafter called the "Owner") and EASTERN GAS & FUEL ASSOCIATES (hereinafter called the "Charterer").

WHEREAS, the Owner and the Charterer have heretofore executed a Bareboat Charter (Contract MCc-41881, Shipsalesdemise, Form No. 303) covering certain vessels; and

WHEREAS, Clause C (1) of said charter contemplates the charter of additional vessels to be shown by addenda to be executed; and

WHEREAS, the Charterer has contracted for a certain additional vessel or vessels;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

Clause C (1) is amended by the addition of the following vessel or vessels and pertinent particulars:

Name of Vessel	Type	Port of Delivery	Basic Hire Per Calendar Month*	Valuation	Operating Limits as Specified in Clause:
WASHINGTON IRVING	EC-2	Baltimore	$7,987.50	$639,000	D-2

* 15% per annum of either the unadjusted statutory sales price or the floor price of the vessel, whichever is higher.

IN WITNESS WHEREOF, the Owner has executed this Addendum in quadruplicate the 16th day of June, 1947 and the Charterer has executed this Addendum the 9th day of June, 1947.

Execution for Charterer:

ATTEST:

C. RUSSELL WALTON,
Assist. Secretary.

or if not incorporated

In the presence of:

——, ——,
Witness.

EASTERN GAS & FUEL ASSOCIATES,
By: R. C. GOODWIN,
Vice President.

Execution for Owner:

Approved as to form:

ARTHUR E. FERRIS,
Charter, Agency and Traffic Counsel.
By D. ECCLESTON.

UNITED STATES OF AMERICA,
By: UNITED STATES MARITIME COMMISSION,
By: R. L. MCDONALD,
For the Commission.

SHIPSALES DEMISE
(Foreign Trade Addendum)

Contract No. MCc 41881
Addendum No. 7

ADDENDUM TO BAREBOAT CHARTER AGREEMENT (herein called the "Agreement") dated as of October 1, 1946, between the UNITED STATES OF AMERICA, acting by and through the UNITED STATES MARITIME COMMISSION (hereinafter called the "Owner") and EASTERN GAS & FUEL ASSOCIATES (hereinafter called the "Charterer"), WITNESSETH:

WHEREAS, on August 15, 1947 the Owner served notice of termination pursuant to Clause 14, Part II, with respect to vessels hereunder operating in foreign trades, and simultaneously advised that the Charterer would be given an opoportunity to continue the use of such vessels under charter in accordance with new terms and conditions to be announced, and

WHEREAS, such new terms and conditions were promulgated by the Owner ~~on August 20, 1947~~ and were accepted by the Charterer, with respect to the vessels hereinafter named, and

WHEREAS, the parties hereto desire to amend this Agreement accordingly.

NOW, THEREFORE, in consideration of the premises, this Agreement is hereby amended as follows with respect to vessels engaged in foreign trades, which are listed on the attached schedule marked "Exhibit A" and made a part hereof by reference:

I. *Period of Vessel's Use.* A maximum period of about six months from the effective date of this Addendum, it being expressly agreed that no voyage shall be commenced after February 29, 1948.

II. *Termination.* The right of either Owner or Charterer to terminate this Agreement pursuant to Clause 14, Part II, may not be exercised (a) with respect to vessels which on September 1, 1947 are covered by this Agreement before November 1, 1947, and (b) with respect to vessels delivered for operation under this addendum subsequent to

September 1, 1947, before the expiration of sixty days from the date of such delivery.

III. *Additional Charter Hire.* Additional charter hire, pursuant to Clause 13, Part II, shall be computed, accounted for and paid separately for voyages which are subject to the terms of this addendum, which shall be treated for accounting purposes as if it constituted a separate charter between the parties. For the purpose of computing aditional charter hire, all voyages commenced on or after September 1, 1947, irrespective of when the vessels are allocated, and all voyages with respect to vessels allocated subsequent to August 20, 1947, irrespective of when such voyage commences, shall be subject to the terms of this Addendum; and all voyages commenced prior to September 1, 1947, with respect to vessels allocated on or before August 20, 1947—shall be subject to the provisions of this Agreement in effect prior to the effective date of this Addendum.

IV. *Net Voyage Profit.* An additional paragraph shall be inserted following the first paragraph of sub-paragraph (a), Clause 23, Part II, entitled "Net Voyage Profit", reading as follows:

> "Upon application of the charterer supported by adequate data based on past experience, the Commission will permit the inclusion in vessel operating expenses of such charges as the Commission determines to be fair and reasonable to provide reserves for vessel repair expenses and/or P. and I. insurance deductible average losses on all voyages terminating after December 31, 1946, provided that at the time of final accounting hereunder each of such reserves shall be adjusted to actual by distributing the balances therein to net voyage profit for the accounting periods involved in the same ratio as the reserve charges to vessel operating expenses in each such period bears to the total thereof for the entire period."

V. *Vessel Lay-up Expenses.* In the event Charterer redelivers any vessel on or after August 15, 1947 and later applies for the charter of such vessel or any other vessel under the terms of this addendum, the cost of delivery from lay-up or otherwise of the vessel so applied for (excluding the cost of repairs) and the cost of redelivery of such vessel (including cost of placing vessel in lay-up) upon termination of this Agreement shall be for Charterer's account and shall not be taken into account in determining additional charter hire pursuant to Clause 13, Part II.

In the event no redelivery is effected subsequent to August 15, 1947 and any additional vessel is chartered under the terms of this addendum, the cost of delivery of such vessel from lay-up or otherwise (excluding the cost of repairs) and the cost of redelivery of such vessel (including the cost of placing vessel in lay-up) upon termination of this Agreement shall be paid for by Charterer but shall be included as voyage expense in determining additional charter hire under Clause 13, Part II.

VI. *Port of Redelivery.* Unless otherwise mutually agreed, vessels allocated hereunder after August 20, 1947, shall be redelivered to the Owner's laid-up fleet at a point to be designated by the Owner, but on the same coast of the United States (i.e. Atlantic, Pacific or Gulf Coast, as the case may be), as the port of delivery.

VII. *Effective Date.* Except as herein otherwise provided this Addendum shall become effective as of September 1, 1947.

IN WITNESS WHEREOF, the Owner has executed this Addendum in quadruplicate the 13th day of October, 1947, and the Charterer has executed this Addendum the 3rd day of October, 1947.

Execution for Charterer:

ATTEST:

C. RUSSELL WALTON,
Assistant Secretary,

or if not incorporated

In the presence of:
——, ——,
Witness.

EASTERN GAS & FUEL ASSOCIATES,
By: R. C. GOODWIN,
Vice President.

Execution for Owner:

Approved as to form:

GEORGE S. ROBINSON,
Acting Chief of the Bureau of Law.
By: ELMER E. METZ.

UNITED STATES OF AMERICA,
By: UNITED STATES MARITIME COMMISSION,
By: R. L. MCDONALD,
For the Commission.

Exhibit A

WILLIAM MCKINLEY
EMILY DICKINSON
WILLIAM BEVAN
ISAAC SHARPLESS
ANDREW STEVENSON
JAMES BOWDOIN
GEORGE VANCOUVER
WASHINGTON IRVING

VOLUME II. EXHIBIT C

[Eastern's application to charter, dated July 25, 1946]

APPLICATION TO CHARTER WAR-BUILT VESSEL(S)

Filed by EASTERN GAS AND FUEL ASSOCIATES a citizen of The United States of America

The undersigned hereby offers to charter for bare-boat use the war-built dry cargo vessel(s) hereinafter described (herein called the "war-built vessel(s)"), in accordance with the provisions of the Merchant Ship Sales Act of 1946, Public Law 321, 79th Cong., 2d Sess., approved March 8, 1946, (herein called the "act"), and the rules and regulations prescribed by the United States Maritime Commission (herein called the "Commission"), sections 299.1 to 299.91 inclusive, of General Order 60, published in the Federal Register F. R. Doc. 46-6683 (herein called the "regulations"), which the applicant agrees shall be binding in all transactions in connection with this application. Applicant also agrees that any amendment or modification of the rules and regulations shall be binding in all transactions approved by the Commission after the date of publication of such amendment or modification in the Federal Register.

In order to induce the Commission to act favorably on this application, the applicant submits in support thereof the following information:

C. *As to the war-built vessels*

12. Applicant offers to charter for bare-boat use the war-built dry cargo vessel(s) designated in items 13 and 14, or the alternative vessels designated in item 15.

13. If specific vessels are applied for, as distinguished from any one or more of a given type, the names of the vessels must be given under this item.

14. If applicant is willing to accept any one or more vessel(s) of a given type or designation, as distinguished from particular vessels, the type or designation of the vessels desired should be set forth as follows:

One vessel(s) of
Type EC 2 (Liberty) Collier
Commission's designation EC 2-S-AW 1
Particular characteristics Collier

• • • • •

EASTERN GAS AND FUEL ASSOCIATES,
Name of Applicant.

(COMMON SEAL.)

By /s/ R. C. GOODWIN,
Vice President.

Attest:

/s/ C. RUSSELL WALTON,
Assistant Secretary.

Dated as of May 8, 1946, but actually executed on July 25, 1946.

• • • • •

VOLUME II. EXHIBIT D

[Maritime Commission telegram of August 12, 1946]

AUGUST 12, 1946.

THE FOLLOWING TELEGRAM IS TO BE SENT TO ALL PERSONS, FIRMS OR CORPORATIONS ON THE ATTACHED LIST.

ALL WAR-BUILT VESSELS HEREAFTER CHARTERED AND DELIVERED ON AND AFTER AUGUST 31, 1946 WILL BE CHARTERED BY THE MARITIME COMMISSION PURSUANT TO THE PROVISIONS OF THE MERCHANT SHIP SALES ACT OF 1946. THE FORM OF FLEET CHARTER TO BE MADE EXCEPT FOR LONG TERM CHARTERS WILL BE SUBSTANTIALLY THE W.S.A. WARSHIPDEMISEOUT 203 FORM ADAPTED TO CONFORM TO THE REQUIREMENTS OF THE MERCHANT SHIP SALES ACT OF 1946 WITH THE FOLLOWING SPECIFIC MODIFICATIONS:

1. THE PERIOD OF THE CHARTER SHALL BE ABOUT SIX MONTHS WITH PROVISIONS FOR FIFTEEN DAY CONCELLATION BY EITHER PARTY.

2. THE RATE OF BASIC HIRE WILL BE AT RATE OF FIFTEEN PER CENT PER ANNUM OF EITHER THE UNADJUSTED STATUTORY SALES PRICE OR THE FLOOR PRICE OF THE VESSEL, WHICHEVER IS HIGHER.

3. THE ADDITIONAL CHARTER HIRE PAYABLE UNDER AND DURING THE PERIOD OF THE FLEET CHARTER SHALL BE (a) 50 PER CENT OF THE AVERAGE NET VOYAGE PROFIT UP TO THE FIRST $100 PER DAY IN EXCESS OF 10 PER CENT OF CHARTERER'S CAPITAL NECESSARILY EMPLOYED IN THE BUSINESS, AND (b) 75 PER CENT OF THE NEXT $200 PER DAY, AND (c) 90 PER CENT OF ALL NET VOYAGE PROFITS IN EXCESS OF $300 PER DAY.

TELEGRAPHIC OR WRITTEN ACCEPTANCE ADDRESSED TO SECRETARY, MARITIME COMMISSION, OF THE CONDITIONS OF THE MARITIME COMMISSION FORM OF CHARTER AS ABOVE OUTLINED MUST BE RECEIVED WITHIN FIVE DAYS FROM DATE.

EXCEPTED FROM THE FOREGOING ARE COMMITMENTS OR CHARTERS WITH RESPECT TO ANIMAL CARRYING VESSELS WHICH WILL BE THE SUBJECT OF SPECIAL ARRANGEMENTS.

W. W. SMITH,
Chairman,
U.S. Maritime Commission.

GRANVILLE CONWAY,
Administrator,
War Shipping Administration.

VOLUME II. EXHIBIT E

[Eastern's telegram of September 20, 1946]

WU37 22

WASHINGTON DC SEP 20 1946 1128A

A J WILLIAMS, SECRETARY
U S MARITIME COMMISSION

WITH REFERENCE TO OUR APPLICATION TO CHARTER NO. 2375 WE HEREBY ACCEPT THE PROVISIONS OF YOUR JOINT WIRE OF AUGUST 12, 1946

EASTERN GAS & FUEL ASSOCIATES BY C RUSSELL WALTON
ASSISTANT SECRETARY

1153A
2375 12 1946.

VOLUME II. EXHIBIT G

[Eastern's telegram of September 30, 1946]

WA13 46 3 EXTRA SER

WUX BOSTON MASS SEP 30 1047A

LEGAL DEPT

U S MARITIME COMMISSION ATT J FRIEDLANDER JR

CHIEF CHARTERING SEC

WE ACKNOWLEDGE RECEIPT OF YOUR TELEGRAM OF SEPTEMBER 27 ADVISING ALLOCATION OF MERRICAM XXXXXXXXX MERRIMAC SEAM WE WISH TO INFORM YOU THAT WE ARE READY WILLING AND ANXIOUS TO TAKE DELIVERY OF THIS VESSEL AS OF VESSELS READINESS UNDER MC FLEET BAREBOAT FROM CHARTER

EASTERN GAS AND FUEL ASSOCIATES BY C RUSSELL WALTON

ASST SECTY

1100A

VOLUME II. EXHIBIT I

[Eastern's summary of April 11, 1947]

[Letterhead omitted]

Summary of Application of Eastern Gas & Fuel Associates

(dated April 9, 1947, (filed April 10, 1947)

The Commission is urged to:—

(1) Determine that the experimental gas turbine be installed in a Standard Liberty ship in lieu of in the Liberty Collier, S.S. MERRIMAC SEAM, thus increasing the revenue of sales of vessels under the Act and expanding the field of the experiment.

(2) Sell the S.S. MERRIMAC SEAM to Applicant under its application to purchase, dated May 8, 1946 and priority thus established, to assist it to overcome its deficiencies in coastwise coal trade tonnage.

(3) Arrange with Applicant by charter or otherwise for operation of gas turbine—Standard Liberty ship at cost to Applicant with payment of 100% of profit and $200,000—to the Commission by Applicant.

April 11, 1947.

VOLUME II. EXHIBIT J

[Eastern's letter of April 21, 1947]

[Letterhead omitted]

April 21, 1947.

We believe strongly the Commission should:

1. Install the experimental gas turbine in a standard type Liberty ship instead of in the only remaining Liberty Collier MERRIMAC SEAM, because of:—

   (a). Deficiency of tonnage to carry coal trade requirements.

   (b). Fast approaching economic limit of life of several old and deep-draft colliers.

   (c). Immediate market for sale of remaining Liberty collier.

   (d). Opportunity for Commission to experiment with the more plentiful type vessel and if the experiment is successful to interest the many operators in offshore trades where such propulsion machinery could produce more attractive benefits of increased speed and fuel economy.

2. Sell the Liberty collier MERRIMAC SEAM (as is) to Eastern Gas and Fuel Asspciates under its priority and application dated May 8, 1946, because:—

   (a). Our deficiency in vessels to carry coal cargoes to our deep draft consignees is the greatest and most serious in the trade.

   (b). We must maintain our old large colliers at very large annual expenditure until they can be replaced by newer colliers.

   (c). We have insufficient vessels to carry practically any of the tonnage of sulphur and phosphate rock, in which trade we had been the largest commercial carriers for about 16 years.

(d). For many years we held annual contracts with at least two consumers for a large part of their cargoes and in some cases for all that we could carry annually in one ship and we now have no bulk cargo vessels which we can place in this trade.

(e). Of the five original applicants in the coal trade for the purchase of Liberty Colliers, we are one of the two which did not get all they requested and the only one which has since required more such vessels than it had (we have chartered vessels and barges from others).

(f). If necessary to further the Commission's program of retiring old tonnage we will trade in one of our old colliers in exchange.

(g). We have offered through point (3) below to reimburse the Commission by extra charter hire for a large part of its expense in point (1) above.

(h). We conceived this idea which will benefit the Commission as well as ourselves.

3. Charter the standard Liberty ship with experimental gas turbine to us at cost with our payment of *all profits* and $200,000 additional to the Commission because:—

(a). We are the best established in coastwise trades to place this vessel on the desired runs.

(b). We are prepared to collaborate at our own expense in engineering research for the Commission.

(c). We are the first to offer our services as charterers of this vessel.

(d). Such charter would provide a medium for our reimbursing the Commission for portion of extra engineering costs.

FBC:vcf

Volume II. Exhibit K

[Dates of delivery and redelivery of chartered vessels]

Eastern Gas and Fuel Associates

Contract No. MCc-41881

Vessel	Delivered	Redelivered
Andrew Stevenson	1/ 7/47	11/19/47
Emily Dickinson	11/13/46	11/20/47
George Vancouver	4/11/47	12/11/47
Isaac Sharpless	12/28/46	11/30/47
James Bowdoin	3/12/47	11/29/47
Merrimac Seam	11/20/46	7/30/47
William Bevan	12/ 7/46	12/11/47
William H. Kendrick	2/22/47	4/25/47
William McKinley	2/20/47	12/19/47
Washington Irving	5/21/47	11/15/47

VOLUME II. EXHIBIT L2

[Eastern's letter of March 31, 1947]

[Letterhead omitted]

March 31, 1947.

Mr. J. M. Quinn, Managing Director,
Finance Department,
U. S. Maritime Commission,
Washington 25, D. C.

DEAR SIR:

Enclosed please find three copies of statement covering the preliminary determination of additional charter hire for the period of January 1, 1947, to January 31, 1947.

The terminated voyages included therein cover the operation of the coastwise collier MERRIMAC SEAM for the period mentioned. It shows a preliminary payment due in the amount of $9,018.00 for which we are enclosing our check.

Trusting you will find this statement in order, beg to remain

Yours very truly,

MYSTIC STEAMSHIP DIVISION,
EASTERN GAS AND FUEL ASSOCIATES.
R. C. GOODWIN,
Vice President.

RCG.MC
encls.

[Accounting enclosed with above letter, calculating secondary contingent hire at each of the rates (50%-75%-90%) prescribed in charter Clause 13, is not reproduced.]

VOLUME II. EXHIBIT L5

[Eastern's letter of July 9, 1947]

[Letterhead omitted]

July 9, 1947.

Mr. J. M. Quinn, Managing Director,
Finance Department,
U.S. Maritime Commission,
Washington 25, D.C.

DEAR SIR:

* * * * *

Enclosed please find four copies of statements of preliminary determination of additional charter hire for the period January 1st to April 30th, 1947, together with our check in the amount of $71,503.00 to cover payment determined to be due at this time.

We have, as suggested in your letter of June 30th, made the best estimations of unrecorded expenses in the short time available, and note that no extension for filing reports can be granted.

We have not replied to your letter of May 21st as it was hoped our Mr. Russell Walton would have had an opportunity to call upon you and explain our situation, which can be done much better than by letter. However at this time such an opportunity has not occurred.

We do not feel that the method of determining Capital Employed, applied to the Balance Sheet for our Steamship Division, gives an equitable result. As previously explained, up to the time we assumed operation of your vessels under Bare Boat Charter arrangements, it had been our practice to carry bank balances in excess of immediate requirements, and other items in the name of the company, without showing any division designation. The Mystic Steamship Division Balance Sheet was therefore at best a tentative one. Financing of Divisions was done from the company as needs arose. It was for this reason that

when application for Bare Boat Charters were filed for, we submitted the Balance Sheet of the company and not of Mystic Steamship Division alone.

With this arrangement in mind, we submit that it is not equitable to arbitrarily assume that two-thirds of our working capital, as reflected at any particular date on the Division Balance Sheet, would be required for the operation of our other activities, as is done under the formula laid down in General Order 60. The amount of working capital required to operate our own coastwise fleet for example is obviously much less than required for offshore vessels. Rather it might well be assumed that all of the working assets are available for Bare Boat vessel requirements, and that operation of our own vessels can be financed as needs arise under the company's long established policies.

We have this month again used for the determination of capital employed, the formula allowed in the absence of an exact allocation of Balance Sheet Items and trust, with the explanation above and pending a call upon you by our Mr. Walton, you may accept this as satisfactory for the present.

Very truly yours,

EASTERN GAS AND FUEL ASSOCIATES,
R. C. GOODWIN,
Vice President.

RCG:R
encls.

[Accounting enclosed with above letter, calculating secondary contingent hire at 50 percent and 75 percent rates prescribed in charter Clause 13, is not reproduced.]

VOLUME II. EXHIBIT L8

[Eastern's letter of September 30, 1947]

[Letterhead omitted]

September 30, 1947.

United States Maritime Commission,
Washington, D. C.

Att: A. C. Waller, Chief Audits Division

GENTLEMEN:

We enclose statements for the determination of additional Charter Hire for voyages terminated prior to July 31, 1947 together with our remittance for $10,019., the amount indicated as due at this time.

As instructed we have made separate calculations for coastwise voyages, although we had assumed from Mr. Williams telegram of June 30, 1947 that separate accounting would be required only for domestic voyages commencing after June 30th.

With regard to the use of the formula for the determination of Capital Invested we direct your attention to our letter to Mr. Quinn of July 9, 1947. As indicated our balance sheet, as submitted, is that of the Steamship Division of Eastern Gas and Fuel Associates, but does not necessarily reflect the full resources available for steamship operations. It has long been our policy to finance all operating divisions as required from the consolidated funds of the parent company. The transfer of additional capital on June 30, 1947 was made to meet your Balance Sheet requirements as to Bare Boats, and if you insist on the use of the Mystic Steamship Division Balance Sheet, this amount should perhaps be properly charged 100% to Bare Boat operations.

In view of our peculiar situation, we still feel that as a matter of equity we should be allowed to continue the use of the formula for the determination of Capital Investment Allowance. Our consolidated Balance Sheet attached will demonstrate we have ample working capital to meet all requirements.

Very truly yours,

MYSTIC STEAMSHIP DIVISION,
EASTERN GAS AND FUEL ASSOCIATES.
R. C. GOODWIN,
Vice President.

Encs.

[Accounting enclosed with above letter, calculating secondary contingent hire at each of the rates (50%-75%-90%) prescribed in charter Clause 13, is not reproduced.]

VOLUME II. EXHIBIT M

[Eastern's letter of April 26, 1950]

[Letterhead omitted]

April 26, 1950.

Mr. E. Barker, Area Auditor,
U.S. Maritime Commission,
Room 1201, Custom House,
Boston, Mass.

Subject: Final Accounting under Shipsalesdemise 303

DEAR SIR:

As suggested I am setting forth below some of the problems we will encounter in rendering final accountings.

Any information or advice as to how these should be treated will be appreciated.

Capital Employed:—See copy of letter of July 9, 1947

For reasons stated we feel we should be allowed to use the formula. It is not possible in our situation to make any exact statement of working capital available to The Steamship Division.

Tail Shafts and Rudders:

We have filed Public Vouchers under date of October 5, 1949 in the amount of $110,281.83 but have heard nothing from The Commission regarding disposition.

Delays in Accepting Deliveries:

We have filed Public Vouchers under date of November 21, 1949 in the amount of $6,477.57 to cover estimated expense incurred. No comment from The Commission.

Expendable Equipment Inventories:

No report of Overages or Shortages has been received from the Commissions Inventory Section. It is indicated that a very long time may elapse before this can be accomplished. We question whether we, if willing, could do this work, inasmuch as our records are mainly rough notes.

Assuming an adjustment will be necessary how does the Commission propose to effect this, after all accounts are in?

If we should undertake to do this work how does the Commission propose to reimburse for the expense incurred?

Post Delivery Overhead Expense:

How will charterer be reimbursed for these assuming final accountings have been rendered?

Carry Back of Losses:

A sense of fairness would indicate this should be allowed. Latest information I have states this question was still under consideration. Has any final decision been arrived at?

Quay Dues:

What evidence, if any, required to demonstrate that these are uncollectible?

Claims & Accounts Receivable Unpaid:

If final accounting insisted upon at this time it is assumed these must be treated as bad debts.

Liabilities:

What does Commission propose to do about claims which may arise after final accounting has been rendered?

A list of all unsettled items in connection with the operations under Bare Boat Charters is attached for your information as requested.

Very truly yours,

MYSTIC STEAMSHIP DIVISION,
EASTERN GAS AND FUEL ASSOCIATES.
E. C. MELVILLE,
Auditor.

ECM:R
encls.

VOLUME II. EXHIBIT N

[Eastern's letter of August 7, 1951]

[Letterhead omitted]

August 7, 1951.

Mr. J. F. Keating, District Comptroller,
Department of Commerce,
Maritime Administration,
45 Broadway,
New York 6, N.Y.

Attention: Mr. T. Conroy

DEAR SIR:

In accordance with your request we submit herewith our Final Accounting with appropriate certificates showing the present determination of this company's aggregate gross liability for "Additional Charter Hire" under Bareboat Charter Agreements (SHIPSALESDEMISE 303).

Examination of our records now indicates the following amounts payable to you based upon our interpretation of existing rules and regulations:

Schedule A—Amount of additional Charter Hire as per enclosed certified statement		$180,482 38
Management Fees (Recapture) U.S.M.C. Invoice 909-200 dated 3/10/48		37,552 61
Net Amount Due—Delivery—redelivery inventories B. B. Vessels		
Revised Delivery Inventories	$96,243 92	
Less: paid or deducted	69,556 52	
		26,687 40
Adjustment of Husbanding Fees—1946 net adj. revised billing	5,595 00	
Compensation as General Agent P. V. dated 11/5/47	2,885 00	2,710 60
Total Payable		$247,432 39

Our records also indicate that the following amounts due to us from you based upon our interpretation of existing rules and regulations:

Rudder & Tailshaft Repairs		$78,786.31
Charter Hire		
SS Page—June 1946	25,727.80	
SS Richards—7/1/46	296.97	
SS Noyes—7/1-3/46	2,051.59	
SS Newton—7/1-3/46	2,049.56	
SS G. White—7/1/46	432.25	
SS W. Gulf—7/1-5/46	3,799.41	
SS S. Point—7/1-3/46	1,661.64	
SS A. L. Kent—7/1-2/46	1,294.32	
SS T. P. Beal—7/1-2/46	1,395.65	
		$38,709.19
Removal of Defense Features		96,850.24
Addendum #6—		
Contract WSA 2631-R-SS G. White	23,089.72	
2446-R-SS J. L. Richards	18,511.00	
2627-R-SS Kopperston	27,122.80	
2444-R-SS Newton	12,420.72	
2635-R-SS W. Gulf	15,706.00	
(P. Vouchers not filed)	96,850.24	
Miscellaneous		
Management Fees—Liquidating Nov. 1948 P. V. dated 12/1/48	45.00	
Management Fees—Liquidating Oct. 1948 P. V. dated 11/3/48	465.00	
Repairs—SS Innesmoor—Job 273—2/18-27/43—Inv. 3/27/43 a/c Reaudit	189.36	
Repairs—SS Tampico—Job 351—12/17/42-2/13/43—Inv. 10/27/43—a/c Reaudit	370.65	
Repairs—SS T. P. Beal—Job—3/29/44—P. V. 5/31/44—a/c Reaudit	107.61	
Repairs—SS F. Tausig—7/-/44—(No P. V.)	632.10	
East Boston Plant retro. wage adj.—a/c repairs 12/31/44-6/30/45—P. Vchrs. 3/24/48	54.48	
	.65	
Genl. Supervisory service 4/12 P. V. 1/14/46	100.00	
Cl. 40229 SS J. L. Richards P. V. 11/24/48	3,101.71	
Adj. of Rep. SS Isaac Sharpless—Job 380—3/10-24/43—Inv. 11/4/43—a/c Reaudit	112.54	
	4,954.02	
Total Receivable		$219,299.76

We enclose herewith our check for $28,132.63, representing the amount by which our obligations to you exceed yours to us. This check may be applied against any of the items on Schedule A; if such an application is made by you, please advise us so our records may reflect the application.

This payment is being made on account at this time with the knowledge that certain items are presently being contested and that additional or amended rules and regulations may affect these obligations. Your acceptance of our check on account shall not be deemed to be an acceptance of the method of accounting adopted by us, nor of any agreement that the payment is accepted by you in final settlement of any of the items shown on the foregoing Schedules A or B. This payment and your acceptance thereof shall be without prejudice to the rights of either of us to contest the validity and amount of any claims between us.

Very truly yours,

EASTERN GAS AND FUEL ASSOCIATES,
A. K. WOOD,
Treasurer.

ECM:td

AFFIDAVIT

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

A. K. Wood, being first duly sworn on his oath, states: That I am Treasurer of the Mystic Steamship Division, Eastern Gas and Fuel Associates Charterer under bareboat charter agreement with the United States Maritime Commission known as "SHIPSALESDEMISE 303" (MCc 41881); that, as such, employees under my direction are responsible for the accuracy and maintenance of the books of account and financial records of the Charterer and are thoroughly familiar with such books and records and with the terms and conditions of the aforesaid bareboat charter agreement and with the orders, rules, regulations, and instructions appertaining thereto as issued by the United States Maritime Commission; that I have consulted with such employees and have carefully examined the statements comprising the accounting annexed hereto covering the period from November 1, 1946, to July 31, 1951, under the aforesaid bareboat charter agreement; and that, to the best of my knowledge and belief, the said accounting reflects a true and complete statement of the additional charter hire accrued to the United States Maritime Commission under the aforesaid bareboat charter agreement during the period from November 1, 1946, to December 31, 1947, under the terms and conditions thereof and in accordance with the orders, rules, regulations, and instructions issued by the United States Maritime Commission appertaining thereto; the balance sheets included in the annexed accounting fairly present the financial position of the Mystic Steamship Division of the Charterer as at the dates thereof, including (but not limited to) an adequate statement of all known and ascertainable liabilities, and the income sheet included in the annexed accounting correctly states the operating results of the Charterer for the period covered by such accounting. All the foregoing is subject to the qualifications contained

in the certificate of Messrs. Arthur Young & Company, accompanying this affidavit.

A. K. Wood.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and Commonwealth, this 8th day of August, 1951.

My commission expires September 5, 1952.

Hebert B. Hallis,
Notary Public.

NEW YORK
CHICAGO
BOSTON
DALLAS
DETROIT
HOUSTON
KANSAS CITY
LOS ANGELES
MILWAUKEE
PHILADELPHIA
PITTSBURGH
TOLEDO
TULSA
WICHITA

ARTHUR YOUNG & COMPANY
Accountants and Auditors
80 Federal Street
Boston 10, Massachusetts

CANADA
ENGLAND
FRANCE
VENEZUELA

Maritime Administration,
U. S. Department of Commerce,
Washington, D. C.

DEAR SIRS:

We have examined the accompanying statements comprising the "Final Accounting" of Mystic Steamship Division of Eastern Gas and Fuel Associates required by General Order 60, Supplement 21, under Bareboat Charter Agreements (SHIPSALESDEMISE 303-MCc41881) between Mystic Steamship Division and the U. S. Maritime Commission (now Maritime Administration) for the period from November 1, 1946 to December 31, 1947. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances, except that we did not physically verify the various types of inventory aboard vessels at the beginning and end of each accounting period. We have previously made examinations of the financial position and the results of operations of Mystic Steamship Division covering the periods affected in conjunction with the annual examination of Eastern Gas and Fuel Associates. The accounting records of Mystic Steamship Division are maintained on a divisional basis, and therefore do not necessarily reflect all the non-operating transactions which would be reflected if this division were a separate and distinct corporate entity.

The accompanying "Final Accounting", which reflects an aggregate gross liability of $454,580.05 for "additional charter hire" under the above agreements and a net lia-

bility of $181,418.05 after applying payments of $273,162.00 made to date, represents a detailed accounting as of the present date, but is not final due to possible adjustments for additional post redelivery overhead expenses, rudder and tailshaft repair expenses, overages and shortages of expendable inventories and such other adjustments as may be required due to subsequent decisions or rulings of the Maritime Administration, subsequent collection or non-collection of claims or accounts receivable now unpaid, and subsequent establishment of any liabilities which have not yet arisen. With respect to expenditures for rudder and tailshaft repairs, Mystic Steamship Division has set the amount of such repairs up on its balance sheet as a claim against the Maritime Administration and has excluded such amount from expenses of operating vessels under the Bareboat Charter Agreements.

In our opinion, subject to the qualifications in the two preceding paragraphs, the accompanying statements have been prepared in accordance with the terms and conditions of the applicable charter agreements and with the applicable orders, rules, regulations and instructions issued by the Maritime Administration and fairly present the proper determination of "additional charter hire" accrued to the account of the Maritime Administration under such agreements for the period from November 1, 1946 to December 31, 1947.

There is also attached, as Exhibit AA, a computation of "additional charter hire" under the above agreements based on the use of "net worth requirements" as "capital necessarily employed", which computation results in a net liability of $180,482.38 after applying payments of $273,162.00 made to date. In our opinion, subject to the qualifications in the first two paragraphs above, this exhibit is a correct computation on the basis outlined therein.

ARTHUR YOUNG & COMPANY.

Boston, Massachusetts, July 31, 1951.

[Final accounting enclosed with above letter and certificate, calculating secondary contingent hire in accordance with charter Clause 13, is not reproduced.]

VOLUME II. EXHIBIT P

[Eastern's letter of September 14, 1954]

[Letterhead omitted]

September 14, 1954.

Your Reference File:
QM67/L25-6-2:43002 (EAB)

U.S. Department of Commerce,
Maritime Administration,
45 Broadway,
New York 6, New York.

Attn: Mr. E. B. Donnelly

For: J. G. Barkan, District Comptroller

Subject: Supplementary Accountings under
Shipsalesdemise 303, Contract MCc-41881

GENTLEMEN:

As requested in your letter of September 1, enclosed is signed affidavit, in quadruplicate, in accordance with requirements by the provisions of Part VI of Supplement 21 of General Order 60.

Very truly yours,

MYSTIC STEAMSHIP DIVISION,
Eastern Gas and Fuel Associates.
C. R. WALTON,
Vice President.

Encls.

AFFIDAVIT

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

Henry W. Leander, being first duly sworn on his oath, states: That I am Assistant Auditor of the Mystic Steamship Division, Eastern Gas and Fuel Associates, Charterer under bareboat charter agreement(s) with the United States Maritime Commission known as "WARSHIPDEMISEOUT 203" (WSA —)/"SHIPSALESDEMISE 303" (MCc-41881)'; that, as such, I am responsible for the accuracy and maintenance of the books of account and financial records of the Charterer and am thoroughly familiar with such books and records and with the terms and conditions of the aforesaid bareboat charter agreement and with the orders, rules, regulations, and instructions appertaining thereto as issued by the United States Maritime Commission, that I have carefully examined the statements comprising the accounting annexed hereto covering the period from November 1, 1946 to December 31, 1947, under the aforesaid bareboat charter agreement(s); and that, to the best of my knowledge and belief, the said accounting reflects a true and complete statement of the additional charter hire accrued to the United States Maritime Commission under the aforesaid bareboat charter agreement(s) during the period from November 1, 1946 to December 31, 1947, under the terms and conditions thereof and in accordance with the orders, rules, regulations, and instructions issued by the United States Maritime Commission appertaining thereto; the balance sheets included in the annexed accounting fairly present the financial position of the Charterer as at the dates thereof, including (but not limited to) an adequate statement of all known and ascertainable liabilities, and the income sheet included in the annexed accounting correctly states the operating results of the Charterer for the period covered by such accounting.

HENRY W. LEANDER.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this 14th day of September, 1954.

My Commission expires October 17, 1958.

PAUL M. JAQUITH,
Notary Public.

Adjustment of Final Accounting Under SHIPSALESDEMISE 303 MCc—41881

December 1953.

Under date of August 7, 1951, the "Final Accounting" of Mystic Steamship Division of Eastern Gas & Fuel Associates under SHIPSALESDEMISE 303-MCc-41881 was filed with the Maritime Administration. As pointed out in the accompanying report of Arthur Young & Company, accountants and auditors, the determination of "additional charter hire" in that "Final Accounting" represented a detailed accounting as of that date, but was not final due to "possible adjustments for additional post redelivery overhead expenses, rudder and tailshaft repair expenses, overages and shortages of expendable inventories and such other adjustments as may be required. . . ." The report also stated: "With respect to expenditures for rudder and tailshaft repairs, Mystic Steamship Division has set the amount of such repairs up on its balance sheet as a claim against the Martime Administration and has excluded such amount from expenses of operating vessels under the Bareboat Charter Agreements."

Under date of May 13, 1953, the Maritime Administration submitted its invoice #311-131 for "Adjustment of Additional Charter Hire pursuant to Clause 13 of Part II of SHIPSALESDEMISE 303—Bareboat Charter Agreement No. MCc-41881" reflecting certain mathematical adjustments in the computation of additional charter hire between the "Final Accounting" submitted under date of August 7, 1951 and the adjusted accounting dated February 12, 1952. The gross amount of additional charter hire shown by this invoice was $464,876.09. This amount was used in arriving at a settlement of outstanding accounts between the Maritime Administration and Mystic Steamship Division under date of August 12, 1953, at which time a check in the amount of $33,846.80 was forwarded by Mystic Steamship Division to the Maritime Administration.

Under date of October 5, 1953, Mystic Steamship Division advised the Maritime Administration that further ad-

justments of the computation of additional charter hire under the Bareboat Agreements would be required to reflect (1) rudder and tailshaft repair expenses and (2) additional post redelivery overhead expenses.

Rudder and tailshaft repair expenses:

During the period of operations under the Bareboat Charter Agreements, certain expenditures ($78,786.31) were incurred by Mystic Steamship Division for repairs and renewals of the rudders and/or tailshafts of substantially all of the vessels under charter. Under date of October 5, 1949 these expenditures, together with certain additional amounts representing charter hire and operating expenses during the period of repair, plus towboat and pilotage service charges, were submitted to the Maritime Administration for reimbursement on Public Vouchers. A summary of these amounts is submitted in Schedule 3 herewith.

In December 1949, libels against the United States of America were filed to recover the amounts involved with respect to eight of the ten vessels.

On February 26, 1952, the above libels were discontinued by the filing of a discontinuance as to each vessel.

Since the Maritime Administration took the position that the rudder and tailshaft repair expenditures were not caused by a latent defect in the vessels at time of delivery to the charterer, these expenditures must then represent operating expenses during the period of charter. As explained in the accountant's report accompanying the original "Final Accounting", these expenses ($78,786.31) were set up on the balance sheet as a claim receivable against the Maritime Administration and were excluded from operating expenses in such "Final Accounting". A recomputation of the amount of "additional charter hire" due the Maritime Administration under this charter agreement after reflecting these repair and renewal expenditures as additional operating expenses (as well as other items explained below) is submitted herewith in Schedules 1 and 2.

Additional post redelivery overhead expenses:

In order to facilitate the final settlement as to delivery and redelivery inventories of expendable equipment and spare parts with the Maritime Administration, Mystic Steamship Division retained an outside firm—Maritime Associates—to compute the amount of the redelivery inventories and to settle any disputes as to the net "overs and shorts" with the Maritime Administration. This work was completed during 1953. A fee of $475.00 per vessel was charged by Maritime Associates for this work, and the total fee for the ten vessels ($4,750.00) has been charged as an additional post delivery overhead expense in the recomputation of the amount of "additional charter hire" due the Maritime Administration in Schedules 1 and 2 herewith.

CONCLUSION

As a result of the recomputation of the "additional charter hire" to reflect the additional operating expenses and additional post redelivery overhead expenses outlined above, a net amount of $57,663.25 is shown by Schedules 1 and 2 herewith to have been overpaid, and to be now due Mystic Steamship Division from the Maritime Administration.

Boston, Mass., December 7, 1953.

[Accounting enclosed with above letter and certificates, calculating secondary contingent hire in accordance with charter Clause 13, is not reproduced.]

VOLUME II. EXHIBIT S

[Maritime Telegram of August 15, 1947]

U. S. MARITIME COMMISSION
Secretary's Office
(Operating Contracts Division)

August 15, 1947.

BOOK TELEGRAM

TO ATTACHED BAREBOAT CHARTERERS OF MARITIME COMMISSION VESSELS

THE USE OF ANY AND ALL VESSELS CHARTERED TO YOUR COMPANY PURSUANT TO THE PROVISIONS OF SHIPSALESDEMISE 303 IS HEREBY TERMINATED AS FOLLOWS:

WITH RESPECT TO VESSELS WHOSE VOYAGES TERMINATE ON OR AFTER AUGUST 31, 1947 THIS TELEGRAM SHALL BE DEEMED TO BE THE OWNER'S FIFTEEN DAYS NOTICE OF CANCELLATION PURSUANT TO CLAUSE 14 OF PART II OF THE CHARTER:

WITH RESPECT TO VESSELS WHOSE VOYAGES HAVE TERMINATED OR WILL TERMINATE PRIOR TO AUGUST 31, 1947 THIS TELEGRAM WILL ALSO BE DEEMED TO BE THE OWNER'S FIFTEEN DAYS NOTICE OF CANCELLATION PURSUANT TO SAID CLAUSE 14 AND/OR CLAUSE C(2) OF PART I.

YOU WILL BE GIVEN OPPORTUNITY TO CONTINUE THE USE OF VESSELS UNDER CHARTER PURSUANT TO NEW TERMS AND CONDITIONS TO BE ANNOUNCED WITHIN THE NEXT FEW DAYS.

IF WITHIN SEVEN DAYS FROM DATE HEREOF YOU ADVISE AS TO THOSE VESSELS WHICH ARE ENGAGED SOLELY IN DOMESTIC TRADE, THE COMMISSION WILL EXCEPT SUCH VESSELS FROM THIS NOTICE.

(signed) A. J. WILLIAMS,
Secretary United States Maritime Commission.

VOLUME II. - EXHIBIT T

[Maritime Telegram of August 20, 1947]

U. S. MARITIME COMMISSION

Operations

Washington, D.C.

August 20, 1947.

BOOK TELEGRAM

TO ATTACHED BAREBOAT CHARTERERS OF MARITIME COMMISSION VESSELS

PURSUANT TO THE COMMISSION NOTICE OF AUGUST 15, 1947, AS TO THE TERMINATION OF THE USE OF ALL VESSELS CHARTERED TO YOUR COMPANY SUBJECT TO THE PROVISIONS OF SHIPSALESDEMISE 303, THE U.S. MARITIME COMMISSION TODAY AUTHORIZED AN ADDENDUM TO ITS BAREBOAT CHARTER AGREEMENT FOR WARBUILT VESSELS, "SHIPSALESDEMISE 303," EFFECTIVE AS OF SEPTEMBER 1, 1947, PROVIDING SUBSTANTIALLY AS FOLLOWS:

1. RATES OF BASIC AND ADDITIONAL CHARTER HIRE FOR FOREIGN TRADE REMAIN UNCHANGED STOP
2. PERIOD OF ABOUT SIX MONTHS, BUT NO VOYAGES TO BE COMMENCED AFTER FEBRUARY 29, 1948, SUBJECT TO TERMINATION AS TO ANY VESSELS ON FIFTEEN DAYS' NOTICE BY EITHER PARTY TO BE GIVEN AFTER A PERIOD OF SIXTY DAYS FROM THE DATE WHEN THE VESSEL BECOMES SUBJECT TO THE PROVISIONS OF THE ADDENDUM STOP
3. THE PAYMENT OF ADDITIONAL CHARTER HIRE PURSUANT TO CLAUSE 13 SHALL BE COMPUTED SEPARATELY FOR THOSE VOYAGES COMMENCED PRIOR TO SEPTEMBER 1, 1947, AND THOSE WHICH COMMENCE UNDER THE ADDENDUM TO THE CHARTER AGREEMENT HEREIN AUTHORIZED, WITH THE UNDERSTANDING THAT THE MARITIME COMMISSION MAY PERMIT CHARTERERS TO ESTABLISH RESERVES FOR REPAIR EXPENSES AND EXPENSES USUALLY COVERED BY P & I INSURANCE STOP

4. IN THE EVENT ANY CHARTERER HAS REDELIVERED OR DOES REDELIVER ANY VESSEL WHICH ON OR AFTER AUGUST 15, 1947, WAS OR SHALL BE UNDER SHIPSALESDEMISE 303 AND SUBSEQUENT TO SUCH REDELIVERY APPLIES FOR THE CHARTER OF ANOTHER VESSEL THEREUNDER, THE CHARTERER MUST AGREE TO ASSURE THE COST OF DELIVERY OF SUCH VESSEL FROM LAYUP OR OTHERWISE (EXCLUDING THE COST OF REPAIRS) AND THE COST OF REDELIVERY OF SUCH VESSEL (INCLUDING COST OF PLACING VESSEL IN LAYUP) UPON TERMINATION OF THE CHARTER AT A POINT DESIGNATED BY THE OWNER, AND SUCH ASSUMED COSTS (EXCLUSIVE OF REDELIVERY REPAIRS) SHALL NOT BE TAKEN INTO ACCOUNT IN DETERMINING ADDITIONAL CHARTER HIRE PURSUANT TO CLAUSE 13 OF THE CHARTER AGREEMENT STOP

5. IN THE EVENT A CHARTERER APPLIES FOR THE CHARTER OF A VESSEL OR VESSELS IN ADDITION TO THOSE WHICH ON AUGUST 15, 1947, WERE UNDER SHIPSALESDEMISE 303 (AND HAS NOT REDELIVERED ANY VESSEL OR VESSELS SUBSEQUENT TO AUGUST 15, 1947) THE CHARTERER MUST AGREE TO PAY THE COST OF DELIVERY OF SUCH ADDITIONAL VESSEL OR VESSELS FROM LAYUP OR OTHERWISE (EXCLUSIVE OF REPAIRS) AND THE COST OF REDELIVERY (INCLUDING THE COST OF PLACING VESSEL IN LAYUP) OF SUCH VESSEL UPON TERMINATION OF THE CHARTER AT A POINT DESIGNATED BY THE OWNER, AND SUCH COSTS SHALL BE CONSIDERED AS VOYAGE EXPENSE IN DETERMINING ADDITIONAL CHARTER HIRE PURSUANT TO CLAUSE 13 OF THE CHARTER AGREEMENT STOP

PLEASE ADVICE NOT LATER THAN AUGUST 27, 1947, IF YOU ACCEPT THE ADDENDUM AS SPECIFIED HEREIN. UPON WRITTEN NOTICE BEING GIVEN OF SUCH ACCEPTANCE, YOU ARE AUTHORIZED TO CONTINUE THE USE OF ANY VESSELS NOW CHARTERED TO YOU PURSUANT TO SHIPSALESDEMISE 303 UNDER THE PRESENT TERMS AND CONDITIONS AS TO ANY APPROVED VOYAGES

COMMENCING PRIOR TO SEPTEMBER 1, 1947, BUT THE VOYAGES OF ANY NEW VESSEL ALLOCATIONS AFTER AUGUST 20, 1947, SHALL BE UNDER THE TERMS AND CONDITIONS OF THE ADDENDUM. IF SUCH WRITTEN NOTICE OF ACCEPTANCE OF THE ADDENDUM IS NOT RECEIVED BY THE COMMISSION ON OR BEFORE AUGUST 27, 1947 ALL VESSELS, PURSUANT TO THE PROVISIONS OF SHIPSALESDEMISE 303, SHALL BE REDELIVERED IN ACCORDANCE WITH THE TERMS OF SUCH CHARTER UPON COMPLETION OF APPROVED VOYAGES COMMENCED PRIOR TO SEPTEMBER 1, 1947.

A. J. WILLIAMS,
Secretary U.S. Maritime Commission,
PASULLIVAN, *mc*

VOLUME II. EXHIBIT U

[Eastern's telegram of August 25, 1947]

WU34 PD

WUX BOSTON MASS AUG 25 307P 1947

A. J. WILLIAMS, SECRETARY U S MARITIME COMMISSION.

RETEL YOURS OF AUGUST 15 AND AUGUST 20 WE ACCEPT ADDENDUM SPECIFIED YOUR WIRE OF AUGUST 20 AND HAVE ALL VESSELS NOW CHARTERED TO US PURSUANT TO SHIP SALES DEMISE CHARTER FORM 303 COMMITTED LOAD COAL DURING SEPTEMBER WITH ONE EXCEPTION WHICH VESSEL LOADS EARLY OCTOBER.

R C GOODWIN V P MYSTIC STEAMSHIP DIV E G & FASS.

15 20 20 303

VOLUME II. EXHIBIT V

[Maritime's telegram of August 27, 1947]

U. S. MARITIME COMMISSION
Operations
Washington, D.C.

August 27, 1947.

BOOK TELEGRAM

TO ALL CHARTERERS IN OFFSHORE TRADES

PER LIST ATTACHED

REFERRING OUR TELEGRAM AUGUST 20 COVERING VESSELS CHARTERED FOR OPERATION IN FOREIGN TRADE, AND ANSWERING CERTAIN INQUIRIES RECEIVED, YOUR WRITTEN ACCEPTANCE MAY COVER ALL VESSELS NOW UNDER CHARTER OR ANY LESSER NUMBER PROVIDED EACH OF SUCH LESSER NUMBER OF VESSELS ARE NAMED STOP WITH RESPECT TO THOSE VESSELS AS TO WHICH YOU DO NOT ACCEPT THE ADDENDUM, NOTICE OF TERMINATION PREVIOUSLY GIVEN STANDS, AND ANY FUTURE UTILIZATION OF SUCH VESSELS, IF APPROVED BY THE COMMISSION, WILL BE SUBJECT TO PARAGRAPHS FOUR OR FIVE OF SAID AUGUST 20 TELEGRAM WHICHEVER MAY BE APPLICABLE STOP AS TO THOSE VESSELS INCLUDED IN YOUR ACCEPTANCE, OUR NOTICE OF TERMINATION GIVEN AUGUST 15, 1947, SHALL BE CONSIDERED WITHDRAWN AND FUTURE TERMINATION SHALL BE IN ACCORDANCE WITH ADDENDUM TERMS STOP IN ACCORDANCE WITH AUGUST 20 TELEGRAM, YOUR ACCEPTANCE MUST BE RECEIVED BY THE COMMISSION NOT LATER THAN MIDNIGHT AUGUST 27, 1947.

/s/ A. J. WILLIAMS,
Secretary U. S. Maritime Commission.

VOLUME II. EXHIBIT E8.

[Affidavit of William M. Brady]

[Caption omitted]

AFFIDAVIT OF WILLIAM M. BRADY, ESQUIRE

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, SS:

WILLIAM M. BRADY, being duly sworn, deposes and says:

1. I am Associate Counsel of Eastern Gas and Fuel Associates, a trust organized under the laws of the State of Massachusetts (hereinafter called the "Company"). I have been associated with the Company for fifteen years, and have assisted in the preparation of the Company's defense to the cross-libel of the United States in the above action. In this connection, I have supervised a search of the files of the Company for documentary material having a bearing on the operation of the vessels bareboat-chartered from the United States Maritime Commission under Charter Contract No. MCc-41881 during the period 1946-1947.

2. Attached to this affidavit, as *Exhibit A*, are photostats of sixteen pages from the Company's voyage charter record book, which set forth the details of all thirty-seven foreign voyages made by vessels chartered from the former Maritime Commission in 1946 and 1947, including the vessel name, the charterer (foreign governments and United States Army), the type of cargo carried, the ports of loading and discharge, and freight rates. The entries contained on these sheets were made in the regular course of business by Company employees, concurrently with the occurrences therein recorded.

3. Attached hereto, as *Exhibit B*, are representative clauses copied from such of the voyage charters of these vessels as are still in the files of the Company, showing that approval of the Maritime Commission was required to be obtained as to the use of these vessels. The files contain thirty-one of the thirty-seven charters, and these charters

will be made available to Government counsel for inspection, if requested.

4. Attached to this affidavit, as *Exhibit C*, are copies of such letters and telegrams as we have been able to find in our remaining available files, showing that the Company obtained the approval of the Martime Commission to the terms of the voyage charters of these vessels, including the charterers, the type of cargo, the ports to which carried, the freight rates, and other terms for such transportation.

5. The records of the Company show that on January 29, 1960, the detailed chartering records applicable to four of the vessels—the SS WILLIAM MCKINLEY, SS WILLIAM BEVAN, SS WILLIAM KENDRICK, and the SS WASHINGTON IRVING—were destroyed as being no longer required. This destruction occurred prior to May 10, 1960, when the United States served its cross-libel, asserting for the first time its large cross-claim exceeding $1,000,000 against the Company. The files which were destroyed contained complete information of the type described in paragraphs 3 and 4 above as to the four vessels, and their destruction after fourteen years (but before the Government's cross-claim was filed) results in partial records only being available for the Company's defense of the claim. In respect of three of the vessels—the SS ISAAC SHARPLESS, SS ANDREW STEVENSON, and the SS JAMES BOWDOIN—the files of the Company are incomplete. The records do not show conclusively that the files have been destroyed; they have not, however, been found.

WILLIAM M. BRADY.

Subscribed and sworn to before me this 21st day of November, 1960.

JOHN A. GAGE,
Notary Public;

JOHN A. GAGE. My Commission expires March 18, 1961.

[Exhibit A to above affidavit (Eastern's Voyage Charter Record Book) appears in full as Exhibit E9, Volume II,

to record. It is not reproduced herein, but lists a total of 37 voyages made by Eastern for the following charterers:

No. of Voyages	*Charterer*
2	U.S. Army.
17	French Government.
5	Ministry of Food, London, England.
1	Lloyd Brasiliero.
4	Italian Government.
1	C. H. Sprague & Son.
3	Belgian Government.
3	Dutch Government.
1	Belgian Economic Mission.]

[Exhibit B to the above affidavit appears as Exhibit E10, Volume II, to record. It is reproduced below in its entirety.]

Exhibit B

Typical Clauses Contained in Voyage Charter Parties Relating to Maritime Commission Approval of Charter Terms.

Type A (Contained in at least three charters).

"This charter is subject approval of United States Maritime Commission."

Type B (In at least three charters).

"This contract is subject to the approval of the United States Maritime Commission.

* * * * *

"It is understood that the Owner of this vessel (U.S.A.) has the right under Clause 14 of the Bareboat Charter existing between the Owner of the vessel and Eastern Gas & Fuel Associates, Bareboat Chartered Owners, to terminate the period of use of the vessel by giving written notice to the Bareboat Chartered Owners at least fifteen days prior to the termination of any voyage. Should the Owner of the vessel (U.S.A.) exercise this or any other prerogative it may have under said Bareboat Charter which might frustrate the performance of this Charter, then this Charterparty is to be cancelled without penalty or liability to any of the parties hereto."

Type C (In the two charters to the United States Army).

"C. Price Adjustment for Changes in United States Maritime Commission Charter Hire Rates. If the vessel is bareboat chartered from the United States Maritime Commission, the per diem rates of compensation set out in Article 2 hereof are based upon the Owner paying to the United States Maritime Commission a basic charter hire (without regard to the additional charter hire payable pursuant to the Merchant

Ship Sales Act of 1946) computed on the basis of fifteen per cent per annum of the estimated statutory sales price for any vessels chartered from the Maritime Commission. In the event that such basic charter hire is greater or less than fifteen per cent per annum of the estimated statutory sales price for any such vessel, the rate of compensation specified in Article 2 hereof will be adjusted in the amount that such basic charter hire is greater or less than fifteen per cent per annum on the estimated statutory sales price."

Type D (In at least one charter).

"The voyage under this charter is subject to the approval of the United States Maritime Commission."

Type E (In at least five charters).

"All terms, conditions and exceptions of bareboat charter between United States Maritime Commission and Mystic Steamship Division, Eastern Gas & Fuel Associates to have precedence over any conflicting terms or conditions of this charter party."

Type F (In at least one charter)

"27. This contract is subject to the approval of the U.S. Maritime Commission."

* * * * *

"It is understood that the owners of the vessel (United States and/or Maritime Commission) has the right under Clause 14 of the bareboat charter existing between the owners of the vessel and Mystic Steamship Division, Eastern Gas & Fuel Associates, Bareboat Chartered Owner to terminate the period of use of the vessel by giving written notice to the bareboat charterers at least 15 days prior to the termination of any voyage. Should the owner of the vessel exercise this prerogative or any other prerogatives it may have under the

bareboat charter existing with MYSTIC STEAMSHIP DIVISION, Eastern Gas & Fuel Associates, that might frustrate the performance of this charter, then this charter to be cancelled without penalty or liability on the part of any of the parties hereto. The Bareboat Chartered Owners shall have the option of substituting a similar Liberty steamer in a similar position, if this charter is so cancelled."

Type G (In at least three charters)

"2. The voyage under this charter is subject to the approval of the United States Maritime Commission.

. . . . . .

"11. If the United States Maritime Commission cancels the bareboat charterparty on the above steamer it is understood that this charter party is to be cancelled without penalty to either party."

Type H (In at least two charters)

"This Charter Party is subject to approval by the United States Maritime Commission and the provisions of the Bare Boat Charter of said steamer from the United States Maritime Commission to the Chartered Owner and to the provisions of U.S.M.C. General Order 60, supplement 5, part II, Clause 17."

Type I (In at least two charters)

"25. This Charter is subject to the approval of the United States Maritime Commission.

. . . . . .

"29. It is understood that the United States Maritime Commission has the right under bareboat charter existing (or to exist) between it and Mystic Steamship Division, Eastern Gas & Fuel Associates (Bareboat Charterer) to terminate the period of use of the vessel

by giving written notice to the bareboat charterer at least 15 days prior to the termination of any voyage. Should United States Maritime Commission exercise this prerogative or any other prerogative it may have under the bareboat charter existing with Mystic Steamship Division, Eastern Gas & Fuel Associates, that might frustrate the performance of this charter, then this charter to be cancelled without penalty or liability on the part of any of the parties hereto."

Type J (In at least one charter)

"29. It is understood that the Owners of the vessel (United States and/or Maritime Commission) have the right under Clause #14 of the bareboat charter existing between the Owner of the vessel and Mystic Steamship Division, Eastern Gas & Fuel Associates (Bareboat Charterers) to terminate the period of use of the vessel by giving written notice to the Bareboat Charterers at least 15 days prior to the termination of any voyage. Should the Owners of the vessel exercise this prerogative or any prerogative it may have under the bareboat charter existing with Mystic Steamship Division, Eastern Gas & Fuel Associates, that might frustrate the performance of this charter, then this charter to be cancelled without penalty or liability on the part of any of the parties hereto. The Bareboat Chartered Owner shall have the option of substituting a similar Liberty steamer in a similar position if this charter is so cancelled."

[Exhibit C to Brady affidavit (Volume II, Exhibit E11) is reproduced on pp. 91-96 of Eastern's Record Appendix.]

☆ U. S. GOVERNMENT PRINTING OFFICE 1962 860548 379

[fol. 245] Minute entry of argument and submission—November 7, 1962 (omitted in printing).

[fol. 246]

IN UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 6035.

MASSACHUSETTS TRUSTEES OF EASTERN GAS AND FUEL ASSOCIATES, Libelants-Appellants,

v.

UNITED STATES OF AMERICA, Respondent-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

[202 F. Supp. 297, 1962 A.M.C. 445; 1962 A.M.C. 1162]

Before Woodbury, Chief Judge, and Hartigan and Aldrich, Circuit Judges.

J. Franklin Fort, with whom James S. Eastham, William M. Brady, Israel Convisser and Kominers & Fort were on brief, for appellants.

Lawrence F. Ledebur, Attorney, Department of Justice, with whom Joseph D. Guilfoyle, Acting Assistant Attorney General, W. Arthur Garrity, Jr., United States Attorney, and Morton Hollander and Leavenworth Colby, Attorneys, Department of Justice, were on brief, for appellee.

OPINION OF THE COURT—January 8, 1963

ALDRICH, Circuit Judge. This libel and cross-libel in personam were brought to recover rental, or charter hire, alleged by libelants to have been overpaid, and by cross-libelant to have been underpaid, in connection with bareboat charters of merchant vessels by the former United

States Maritime Commission to Massachusetts Trustees of [fol. 247] Eastern Gas and Fuel Associates, hereinafter in the singular, Eastern. Basically the case raises the question of whether a profit-sharing lease, with a sliding scale calling for payments surpassing 50 per cent of the net voyage profits in excess of 10 per cent was unlawful. The district court held it was not, dismissed the libel, and rendered a money judgment in favor of the government on its cross-libel. Eastern appeals.

The charters were executed pursuant to the Merchant Ship Sales Act of 1946, hereinafter the 1946 Act, the most pertinent portion of which is section 5(b).

> "The charter hire for any vessel chartered under the provisions of this section shall be fixed by the Commission at such rate as the Commission determines to be consistent with the policies of this Act, but, except upon the affirmative vote of not less than four members of the Commission, such rate shall not be less than 15 per centum per annum of the statutory sales price (computed as of the date of charter). . . ." 50 U.S.C. App. 1738(b).

In addition, subsection (c) of this section adopted certain provisions of the Merchant Marine Act of 1936, hereinafter the 1936 Act, the presently most important of which is section 709(a).

> "Every charter made by the Commission pursuant to the provisions of this title shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumulative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charterer's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall exceed 10 per centum [fol. 248] per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Commission, as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum: *Provided*, That the cumulative net profit so

accounted for shall not be included in any calculation of cumulative net profit in subsequent years." 46 U.S.C. §1199(a).

Further provisions will be referred to later.

The original agreement, under which a number of vessels were chartered, was executed November 7, 1946. It provided for two separate types of rental. One, described as the "Basic Charter Hire" was a flat daily, sometimes called monthly, payment at the rate of 15 per cent per annum of the statutory sales price, which was the minimum amount required by section 5(b). A further paragraph, entitled "Additional Charter Hire," provided for the payment of "Cumulative net voyage profit (in excess of 10% per annum on capital necessarily employed not in excess of $100 per day—50%" (precisely in accordance with section 709(a)), but provided further that if the net voyage profit as defined exceeded $100 a day, 75 per cent of certain excess, and 90 per cent of any balance, hereinafter called the larger percentages, would be due. Eastern's operations until the termination of this charter on September 1, 1947, resulted in cumulative net voyage profits in excess of $100 per day. It paid the government some, but not all, of the larger percentages, and thereafter instituted this libel for their recovery. The government's cross-libel seeks payments of the balance.

In its brief Eastern asserts that the "'basic charter hire' was fixed by Maritime under section 5(b) of the 1946 act . . . [and the] 'additional charter hire' was a profit-[fol. 249] sharing arrangement *fixed under section 709(a)* of the Merchant Marine Act of 1936, . . ." (ital. suppl.) The charter makes no such specification. Eastern's assertion would seem to us, at first blush, merely an employment of the device of giving a dog a bad name and then hanging him for it. If in fact the only authorization for the profit-sharing arrangement was section 709(a), it would seem only too clear that the government's case must fall. Eastern's assertion that the Commission was in that position would seem merely an attempt to assume the point in issue. However, since other courts have taken precisely this approach, we must consider it.

In *American Export Lines, Inc.* v. *United States*, Ct. Cls., 1961, 290 F.2d 925, a case involving an apparently identical lease, the court said, at p. 927, "Section 5(b) of the Merchant Ship Sales Act of 1946 . . . provided for a basic charter hire[1] to be fixed at such rate as the Commission determined to be consistent with the policies of the Act, but at not less than 15 percent of the statutory sales price. . . ." 290 F.2d at 927. The court thereafter stated as one of the issues in the case, "Was the Commission authorized under section 709(a) of the Merchant Marine Act of 1936 to charge additional charter hire on a sliding scale of 50, 75 and 90 percent of the cumulative voyage profits . . . ?" It proceeded, "As a subsidiary question, [fol. 250] was the additional charter hire in excess of 50 per cent of the cumulative net voyage profits a part of the basic charter hire under section 5(b) of the Merchant Ship Sales Act of 1946?" 290 F.2d at 928.

The court concluded without difficulty, citing *Dichman, Wright & Pugh, Inc.* v. *United States*, D.C.S.D.N.Y., 1956, 144 F. Supp. 922, and *United States* v. *East Harbor Trading Corp.*, D.C.S.D.N.Y., 1960, 190 F. Supp. 245, that section 709(a) did not authorize the charging of more than 50 per cent of the net voyage profits. With this we quite agree, as did the court below. Then, with respect to the so-called subsidiary question, whether these larger amounts were inserted in the charter pursuant to the Commission's authority under section 5(b), the court said, "It may be the charter could have provided [this] . . . but the fact is

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[1] The words "basic charter hire" are contained in the charter, but are not to be found in the statute. We note this fact because the court's use of these words constitutes, in our opinion, the first turn in a wrong road. These words may be a convenient and appropriate description for certain purposes, but, as will be developed later, the court uses them for purposes of statutory construction as if they had been contained in the statute itself.

While we are on this subject we might add that Eastern is content to adopt the argument based on these words. At the same time it is indignant with the government for making a counter-argument by substituting the phrase "minimum primary rental," decrying it as "super-market and department-store terminology." Thus it all depends on whose Oxford is gored.

that it did not so provide." Having thus decided that all that was done under section 5(b) was fixing 15 per cent as the "basic charter hire," the court concluded that the Commission had no further authority except what was conferred upon it by section 709(a), which section, as it had already decided, was insufficient to warrant the imposition of the larger amounts.

In *Dichman, Wright & Pugh, Inc.* v. *United States, supra*, cited by the court in *American Export Lines*, the court went further, in a dictum, conceding rather than stating as a "may be," that the larger amounts could legally have been imposed under section 5(b) had the Commission in fact done so. However, like *American Export*, the court then examined the agreement and concluded it had not done so. Finally,[1½] in *United States* v. *East Harbor Trading Corp., supra*, on a motion for summary judgment, the [fol. 251] court adopted this dictum of the *Dichman* case, but held that it was a question for further proceedings to determine which section of the statute the government had in fact proceeded under.[2]

In the present case the district court, after reviewing these earlier decisions, dismissed their approach as a "recondite technicality." We must agree. The charter in no way stated that one of its paragraphs was the product of, or was inserted by virtue of, one section of the statute and the other of the other. The charter was an integrated agreement that made no reference to the statute in any particular. The Commission had a single, overall obliga-

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[1½] After this opinion was written our attention was called to the case of *American Mail Line, Ltd.* v. *United States*, D.C. W.D. Wash., 12/19/62, also decided against the government. It adds nothing requiring separate discussion.

[2] These district court decisions may have constituted an empty victory for the shipping companies, as it was subsequently held that a number of pending suits for recovery of such payments allegedly illegally exacted were time-barred. *American-Foreign Steamship Corp.* v. *United States*, 2 Cir., 1961, 291 F.2d 598, *cert. den.* 368 U.S. 895. *But cf. American Mail Line, Ltd.* v. *United States, supra* n. 1½. We do not consider that question, however, because in the case at bar all payments have not been made.

tion to fix a charter hire.[3] It was but natural to place the formula for computing fixed, and the formula for computing contingent, rental in two separate paragraphs. Simply because the charter described the fixed charge as the "basic charter hire" and the Court of Claims' interpreted section 5(b) as "basic charter hire," and because the second paragraph was entitled "Additional Charter Hire" (in this case words used in section 709(a), but equally descriptive and applicable to the charter provision whether within section 709(a) or not) the court concluded that the Commission had acted outside of its authority, although [fol. 252] conceding it might have provided exactly this, so far as substance was concerned, had it used some other form of expression.

To say that the Commission stultified itself by its choice of format is to elevate semantics above substance. Appellate courts frequently affirm district courts for being right, but for the wrong reason, and we may assume that district courts prefer this to not being affirmed at all. But the courts in the first two of these cases have reversed the Commission outright, and the third has questioned it not for reaching an impermissible result, nor because it gave a wrong reason, but merely because they chose to think that it had one. We cannot accept this approach. If a commission or other body is doing something it would be authorized to do, the presumption should be that it was acting within its authority. With all due respect, we think these courts have lost sight of this principle in a forest of pedagogy.

Eastern contends that it appears of record that the Commission in fact relied upon section 709(a), and that this fact vitiates the charters in any event. We do not so con-

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[3] It was to make contracts "in the same manner that a private corporation may contract within the scope of the authority conferred by its charter." Section 207 of the 1936 Act, 46 U.S.C. 1117, incorporated into the 1946 Act by section 12 thereof, 50 U.S.C. App. 1745.

[4] 290 F.2d at 930-31, perhaps the best articulation of this point. Another argument is used in *Dichman, Wright & Pugh, Inc.* v. *United States, supra.*

strue the record.[5] But even if the Commission failed to make an exact analysis of the separate scope of each section of the act, Eastern's conclusion would not follow. The argument goes that such action would involve a determination that the fixed rate charged under section 5(b) was "consistent with the policies of [the] Act" as that section requires, which in turn would mean, Eastern says, that to charge anything further was inconsistent with the policies of the act. We do not subscribe to this reasoning. Rather, we assume the Commission determined that this particular [fol. 253] fixed charge was consistent provided it was accompanied by the contingent obligations elsewhere provided for. Eastern's argument would lead to the strange result that even if the Commission was authorized to conclude that the larger percentages could be appropriate charter hire in a proper case, when the Commission charged them it felt they were inappropriate. For this Eastern must carry a heavy burden of proof which we hold it has not met.

We accordingly conclude that the only question for decision is whether, in point of fact, the Commission had authority to make charters requiring the payment of more than 50 per cent of the net voyage profits. Because of their interrelationship we must consider both the 1936 and the 1946 acts. The 1936 Act covered a number of subjects. Subchapter VII, entitled Private Charter Operation, authorized the Commission to recondition old merchant vessels, and to construct new ones, in private yards by competitive bids. The Commission was then authorized to charter such vessels by competitive bidding, section 706, 46 U.S.C. §1196, or, in certain circumstances, without bidding, section 714, 46 U.S.C. §1204. In the case of competitive bids the Commission was to accept, subject to certain, here irrelevant, conditions, the "bidder proposing to pay the highest monthly charter hire." Section 707, 46 U.S.C. §1197. In all cases, the Commission was to demise "upon

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[5] Essentially Eastern's argument is that the Commission constantly used the phrase "additional charter hire," and since this phrase appears in section 709(a) that is what it must have been proceeding under. "Additional charter hire" is not such a phrase of art that it must be so identified. On the contrary, it is accurately descriptive of the contingent charges no matter what was its source.

an annual charter hire of not less than 5 per centum of the [statutorily determined] foreign cost . . . plus 3 1/2 per centum of the depreciated foreign cost." Sections 706, 714 (as amended), 46 U.S.C. §§1196, 1204. Also, in both cases there was applicable section 709(a), 46 U.S.C. §1199, entitled "Excess Profits," quoted *supra*, containing the 50 per cent profit obligation with which we are presently concerned.

In the 1946 Act there was substituted for competitive [fol. 254] bidding authority in the Commission to negotiate and set rates, subject to certain floors. Section 5(b), *supra*. The Commission was bound by another floor as the result of the incorporation of section 709(a) of the 1936 Act. Eastern's position is that this section also set a ceiling. It states, to the point of redundance, that "shall" when used in that section was a "mandatory" word, and that a requirement that an agreement "shall" contain a certain profit-sharing obligation makes it mandatory that it not contain a greater one. We may agree that in this case "shall" was used in a mandatory sense. It does not necessarily follow, as Eastern would have us believe, that there was an implicit mandatory negative.

We start with the familiar maxim, singularly not referred to by either party, *expressio* (or *inclusio*) *unius est exclusio alterius*. It is universally held that this maxim is a guide to construction, not a positive command. This is sufficient answer to Eastern's primary contention. Whether the specification of one matter means the exclusion of another is a matter of legislative intent for which one must look to the statute as a whole. *Springer* v. *Gov't of the Philippine Islands*, 1928, 277 U.S. 189; *City of New York* v. *Davis*, 2 Cir., 1925, 7 F.2d 566; *Simmons* v. *County of Suffolk*, 1918, 230 Mass. 236; *Esso Standard Oil Co.* v. *Holderman*, 1962, 75 N.J. Super. 455; *State ex rel. Curtis* v. *De Corps*, 1938, 134 Ohio St. 295; *Industrial Trust Co.* v. *Goldman*, 1937, 59 R.I. 11; *Attorney General of Utah* v. *Pomeroy*, 1937, 93 Utah 426; *Colquhoun* v. *Brooks*, 1888, 21 Q.B.D. 52, 65. An apt illustration that this is a matter of interpretation in each case may be found in *Attorney General of Utah* v. *Pomeroy*, *supra*. There the court pointed to the constitutional requirement that no person "shall be

convicted of Treason unless on the Testimony of two Witnesses . . ." Could this mean, the court asked, that the government's case would fail if there were three. So, here, [fol. 255] whether a provision that the government's price setting agent, the Commission, must provide for a recapture of 50 per cent of the net voyage profits in excess of 10 per cent means that it could not provide for more must be determined on the circumstances as a whole.

On the matter of legislative intent, some of Eastern's arguments are readily disposed of. It cites the proposition that if two statutes conflict, the specific must control the general. Hence, it says, section 5(b), which gives discretion to the Commission to fix rates, must be controlled by section 709(a), which limits that discretion in a certain particular. This does not bolster Eastern's point; it merely assumes it. In the same manner it says that section 5(b) limits the Commission's authority to charters which are "consistent with the policies of this Act," and that section 709(a) represents that policy. Again, this does not help us to construe section 709(a), but only takes us back to the starting point. The question remains, to what extent does section 709(a) seek to control section 5(b)?

Eastern says that if section 709(a) was not intended to set a ceiling as well as a floor, it should have contained the words "not less than." Statutes are not always drawn with such particularity, but may leave such matters to implication. Moreover, when a section is adopted bodily from some other act, care is not necessarily exercised to consider every difference which might arise under the changed conditions. We would agree with Eastern that in the 1936 Act, where section 709(a) was to be read in conjunction with section 706, section 709(a) was, as a practical matter, both a floor and a ceiling. The reason is obvious. Under section 707 competitive bids were to be judged by the "highest monthly charter hire." Hence no bidder would propose a higher profit-sharing provision than that required by section 709(a) because this would be to assume a burden to no purpose. By the same token the Commis- [fol. 256] sion would have no basis for imposing larger percentages. This was an understandable and desirable result. It might be difficult for the Commission, as a minis-

terial matter, to determine which was the "highest" bid if there were submissions varying not only in the fixed rate but in the contingency rate as well. When section 709(a) was inserted into an act which, subject to certain floors, gave the Commission itself power to set rates, it does not follow that it must be taken as reading a mandatory ceiling into that new procedure. The fact that a statute may point in a certain way when employed in one connection does not mean that it must be read exactly the same way in another connection. As we held in *Sherman* v. *Hamilton*, 1 Cir., 1961, 295 F.2d 516, *cert. den.* 369 U.S. 820, the answer depends upon the total context.[6]

[fol. 257] Eastern makes a further argument which really goes back to the 1936 Act, but is couched in terms of construing section 709(a) in conjunction with section 5(b) of the 1946 Act. In substance it is that under section 709(a) "net voyage profits" are determined by deducting "the

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[6] For this reason, even if Eastern's argument based upon the legislative history of section 709(a) in 1936 were sound, we would reject it. In fact it is not sound. Eastern states that a "proposal [for a sliding profit scale] was rejected, and Congress instead adopted the mandatory 50 percent profit sharing provision of section 709(a) . . . ." Due to omissions this statement is highly misleading. The proposed sliding scale (which set no rates, and hence would have permitted the Commission to set even as maxima very 2d Sess. (1936), a bill introduced by Senator Guffey. But the "remodest amounts) was contained in section 47 of S. 4110, 74th Cong., section" by the Senate Committee on Commerce, was not of the section 47 proposal, but, rather, of the entire bill, on the ground that government chartering was, per se, undesirable. The complaint 2d Sess. (1936). Subsequently, Senator Guffey prepared a new was that chartering was a give-away. See S. Rep. 1721, 74th Cong., version of his bill, in which section 47(a) contained the language now in section 709(a) of the act. See H.R. 8555, Amendments intended to be proposed by Senator Guffey, April 24 (Calendar day, May 4), 1936, 74th Cong., 2d Sess. Senator Guffey apparently never introduced this version of his bill into the Senate. Instead, he joined with Senators Gibson and Copeland in introducing a new bill which also included a section containing the language now in section 709(a) of the act. See 80 Cong. Rec. 9885 (1936); §709(a), H.R. 8555, Committee Print, June 13, 1936, 74th Cong., 2d Sess. This section was accepted without amendment. While this particular section may have been designed generally to meet "give-away" objections, we cannot draw any conclusions from this history helpful to Eastern.

charter hire reserved in the charter and . . . reasonable overhead . . . ." and that if the so-called larger percentages were in fact imposed under section 5(b) they would constitute part of "the charter hire reserved in the charter" and therefore would have to be so credited, with consequent confusion. It may be conceded that when section 709(a) was to be read in connection with charters made pursuant to section 706 of the 1936 Act, for reasons already discussed no larger percentages would be entailed because no bid would have included any such amounts. Possibly if Congress had been starting from scratch in 1946 it would not have devised exactly the section 709(a) language. But this does not mean that this language is inconsistent with the Commission's determination under section 5(b) to charge larger percentages. On the contrary, it seems to us that Eastern's argument is forced and unnatural. Section 709(a) required that every charter contain a provision for the payment of one half of the net profits (as therein defined) as "additional charter hire." At the same time it provided that "charter hire" was to be deducted to determine the profits. Hence, if Eastern wishes to be entirely literal, it would have to say that even as to the 50 per cent profit payment, this is part of the "charter hire" and so is ordered to be deducted. Obviously, such a strict reading of the language is absurd, for as a matter of common sense profits are not deducted in order to determine profits. Eastern naturally does not so read the language when it is considering the 50 per cent profit provision. It only seeks to do so when the percentages are larger. We do not [fol. 258] believe that such manufactured complications show the intent of Congress.

In sum, we find no specific single answer to the question of intent. We turn to more general matters. Eastern alleges that the policy of the 1946 Act was to assist the shipping industry. This may be conceded. The act had other purposes as well. The very fact that the Commission could in no case make a lease calling for less profit-sharing than is specified in section 709(a) shows that Congressional liberality was not unlimited. Even more uncompromising is the final clause in section 5(b) which provided that if the Commission in a particular case voted to charge less than the regular 15 per cent minimum provided in that

section, the charter hire should in no event be "less than the prevailing world market charter rates." It is difficult to regard this as an indication of general beneficence. The reason is clear. The dominant purpose of the 1946 Act was to sell vessels, not to charter them. At all times preference was to be given to applicants proposing to purchase. Section 7(a), 50 U.S.C. App. §1740(a). In fact a vessel could not be chartered at all until it had been advertised for sale for 60 days. Section 5(a), 50 U.S.C. App. §1738(a). Rather than trying to temper the wind to charterers, we must conclude that the important consideration was to avoid making charters too cheap. As the court said in *American President Lines, Ltd.* v. *United States*, 3 Cir., 1959, 265 F.2d 552, 553, quoting the district court, "[I]f the hire were made too attractive the pronounced policy to demise vessels outright would be thwarted. No prudent business man would purchase a commodity which could be leased at a comparatively more favorable price."[7] [fol. 259] This did not mean that charterers were to be taken advantage of. Congressional aid to shippers, tangibly expressed by subsidy provisions which could cushion losses to charterers as well as to owners, remained in effect. *Cf. United States* v. *Moore-McCormack Lines, Inc.*, 4 Cir., 1962, 308 F.2d 866. But certainly an intention to aid shippers did not mean that every provision in the act was to be construed against the government. We suggest that the very existence of the subsidy is a reason for not restricting the freedom given to the Commission under section 5(b) to negotiate for amply large initial charter rates.[8]

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[7] The phrase "consistent with the policies of this Act," which Eastern argues means "be kind to shippers," not only may refer to this other purpose, but there is evidence that in fact it was so intended. "Inasmuch as the policy of the measure is to put as many war-built vessels as possible into private ownership, the Commission is directed not to approve applications to charter unless such chartering is consistent with the policies of the Act." S. Rep. No. 807, 79th Cong. 1st Sess. 13 (1945).

[8] Actually, the government makes a persuasive argument that within the framework of this act it could be to the advantage of shippers to permit the Commission to charge more than 50 per cent of graduated profits, for if it could not do this it might feel called upon to demand a larger fixed fee. If a venture proved unsuccessful, the higher fixed rate could obviously be disastrous.

In section 5(b) Congress gave the Commission discretion to charge such rates as it felt appropriate, except that it established two floors. In section 709(a) it established another floor. These floors were specifically and unambiguously stated. Eastern's asserted ceiling exists, at best, only by implication. While we would be prepared to find such an implication if it seemed called for, we believe that limitations upon an otherwise general grant of power should not lightly be inferred. *Springer* v. *Gov't of the Philippine Islands, supra; cf. Esso Standard Oil Co.* v. *Holderman, supra; State ex rel. Curtis* v. *De Corps, supra.* Viewing this statute as a whole our disposition is against doing so. We accept the assumption, or conclusion, of the three cases initially discussed, and hold that the Commis- [fol. 260] sion was authorized to include the larger percentages in the charters.

Although we have reached this decision independently we do not wish, by silence, to deny the validity of certain other of the government contentions, particularly its point that in case of ambiguity it is appropriate to give weight to the view of the body entrusted to administer the act. *American Power & Light Co.* v. *S.E.C.*, 1 Cir., 1944, 141 F.2d 606, *aff'd*, 329 U.S. 90; *West Texas Utilities Co.* v. *N.L.R.B.*, D.C. Cir., 1950, 184 F.2d 233, *cert. den.* 341 U.S. 939; *North American Utility Securities Corp.* v. *Posen*, 2 Cir., 1949, 176 F.2d 194. One cannot fail to be impressed by the attention which the Commission gave to the desirability of charging the larger percentages and to the reasons which motivated it. However, we regard this as unnecessary to our decision.

The second aspect of the case is Eastern's contention that the Commission had no power to change the basis of accounting, and hence worsen its position under the charter, in September 1947, by terminating the charter and granting a new one.* Since the charter was terminable at will, this change was normally the Commission's right. *Gebhard* v. *Royce Aluminum Corp.*, 1 Cir., 1961, 296 F.2d 17.

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* Eastern says in reality the Commission rewrote the charter. Whether this is the substance of the matter makes no present difference.

Eastern's complaint is bottomed on the argument we have already considered, that section 709(a) was for the benefit of shippers and set a ceiling upon the Commission's authority with respect to profit-sharing agreements. This part of its case must fall with the other.

Finally, Eastern makes a separate contention with respect to two single voyage subcharters made by Eastern just before September 1, 1947 and consented to by the Commission pursuant to a clause in the charter requiring its consent to any subcharter or assignment. Eastern takes [fol. 261] the position that, irrespective of section 709(a), this assent prevented the Commission from terminating or modifying the charter with respect to these two vessels until these voyages had been completed. The provision requiring the Commission's assent was inserted for the government's benefit, not for Eastern's. Indeed, Eastern agrees that the Commission might have terminated the charter outright on September 1 in spite of this assent. In that case Eastern would have been under no obligation to the subcharterers because their agreements contained a provision releasing Eastern in case of "frustration," and an outright termination of the charter would have been obvious frustration. Eastern's point is that the Commission's grant of a new charter, although on different terms, deprived it of this defense, and consequently the government should be held to the original charter. We cannot believe that the Commission's permitting Eastern to make a subcharter was intended as an enlargement of Eastern's rights.

Judgment will be entered affirming the judgment of the District Court.

[fol. 262]

IN UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

JUDGMENT—January 8, 1963

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

Roger A. Stinchfield, Clerk.

Approved: Peter Woodbury, Ch. J.

Thereafter, on January 23, 1963, mandate issued and the original papers were returned to the District Court.

[fol. 263] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 264]

SUPREME COURT OF THE UNITED STATES

No. —October Term, 1962

MASSACHUSETTS TRUSTEES OF EASTERN GAS AND FUEL ASSOCIATES, Petitioners,

vs.

UNITED STATES.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—March 26, 1963

Upon Consideration of the application of counsel for petitioners,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 7, 1963.

Arthur J. Goldberg, Associate Justice of the Supreme Court of the United States.

Dated this 26th day of March, 1963.

[fol. 265]

SUPREME COURT OF THE UNITED STATES

No. 137—October Term, 1963

MASSACHUSETTS' TRUSTEES OF EASTERN GAS AND FUEL ASSOCIATES, Petitioners,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—October 14, 1963

The petition herein for a writ of certiorari to the United State Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.